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**IMPLEMENTATION OF INDIAN  
GAMING REGULATORY ACT**

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**OVERSIGHT HEARING**

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS  
OF THE

COMMITTEE ON NATURAL RESOURCES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

PUBLIC LAW 100-497, THE INDIAN GAMING REGULATORY ACT OF 1988:  
THE ECONOMIC IMPACT IN SOUTH DAKOTA

HEARING HELD IN WAGNER, SD  
APRIL 22, 1994

**Serial No. 103-17, Part VI**

Printed for the use of the Committee on Natural Resources



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# **PUBLIC LAW 100-497, INDIAN GAMING REGULATORY ACT OF 1988: THE ECONOMIC IMPACT IN SOUTH DAKOTA**

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**FRIDAY, APRIL 22, 1994**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,  
COMMITTEE ON NATURAL RESOURCES,  
*Washington, DC.***

The subcommittee met, pursuant to notice, at 9:10 a.m., at Bingo Hall, Ft. Randall Casino Hotel, Yankton Sioux Reservation, Highway 46, Wagner, South Dakota, the Honorable Bill Richardson (chairman) presiding.

## **STATEMENT OF HON. BILL RICHARDSON**

Mr. RICHARDSON. Good morning.

This is the sixth oversight hearing the Subcommittee on Native American Affairs has held on the implementation of the Indian Gaming Regulatory Act.

Today, we will be focusing on the economic impact of Indian gaming on the tribes of the State of South Dakota. We will also be looking at other issues related to gaming in this state.

As you all know, there is a national debate on Indian gaming in Washington, DC, and across the country. As to whether or not this Act needs amending, I am continuing to keep an open mind. I look forward to learning about the issues, the problems, and hopefully, the success stories of the South Dakota Indian tribes.

Witnesses should keep in mind that they should summarize their remarks. Your full written statement will be made a part of the record, which will be kept open for two weeks. I would ask those witnesses to summarize their remarks in five minutes. As I said, the statements will be fully incorporated in the record, and we feel the question-and-answer period will be the most productive in the session.

Before beginning, I want to thank the Yankton Sioux Tribe for being such gracious hosts and for allowing us to hold this hearing in this hall.

I also want to thank Pat Gross, Mark Rubin, and the rest of Congressman Tim Johnson's staff for their great assistance in putting this hearing together.

Finally, a very special thanks to my good friend and your representative, Congressman Tim Johnson. Tim is an extremely effective member of the Congress of the United States. He is very active on a number of issues, very active on Native American affairs. He

played a great role in the successful passage of the Indian agricultural bill last year and works with us on many, many other Native American initiatives.

He represents the entire State of South Dakota, which makes him represent a district larger than mine. I am Representative Bill Richardson of New Mexico, and I thought I had a large congressional district until I had a chance to fly over some of your beautiful territory this morning.

I am very happy to be with Tim, as he represents his people with great dignity, fairness, and conviction. I count him as an extremely valuable member of the Committee of Natural Resources. As you know, he also chairs a very important agriculture subcommittee on rural development. He was mostly chairing that subcommittee yesterday and, therefore, unable to fly on the same plane with me, but we arrived simultaneously in your beautiful state last night.

I am here for the entire morning. I am here to learn, as chairman of the Subcommittee on Native American Affairs. This is my first trip to your great state and to meet with many of the South Dakota tribes. I look forward to this.

Before I recognize Mr. Johnson, I want to mention that with me are the counsel of the Indian Affairs Subcommittee, the chief of staff, Mr. Tadd Johnson, and on his right, Mr. Rich Houghton, the chief minority counsel, Republican counsel, representing Representative Craig Thomas of Wyoming. We try, as much as we can, to be bipartisan in our subcommittee, and I would now like to recognize the gentleman who ensured and made a big effort to have this hearing in your beautiful state, your representative, Tim Johnson.

#### STATEMENT OF HON. TIM JOHNSON

Mr. JOHNSON. Thank you, Mr. Chairman, and thank you, in particular, for agreeing to hold this hearing here in South Dakota. The Native American Affairs Subcommittee is a subcommittee that is very active. We do not have a lot of opportunities to hold hearings out across the country, and your willingness to hold this hearing in South Dakota I think speaks a lot for your commitment to listen to the people of South Dakota, Indian and non-Indian alike.

As you know, our State of South Dakota has nine Indian reservations, and we have ongoing active gaming operations on many of them. The negotiations with the State have, at times, been rocky, but it has been my impression that, on the whole, it has been an open dialogue.

In some respects, it is regrettable that gaming has become the major source of funds for economic development and employment within the tribal economy, but frankly, after 100 years of virtual utter failure to find a viable source of economic development on Indian operations and for Native Americans in my state, I would have to conclude that it would be inappropriate to look our noses down at an industry which employs over 1,000 people and which generates large amounts of revenue spent for worthy purposes.

Those Native Americans who are employed by the gaming industry in many cases have never had an opportunity to hold a steady job before.

The combination of new economic opportunities plus the enhanced education opportunities with the development of our tribal



colleges have been two of the most positive things that we have seen in a long time in South Dakota to break a cycle of poverty and dependence upon the government, which I think we all agree must be broken.

So, I think, for the first time, we are developing a private economy at our Indian reservations, an economy that is not dependent upon the taxpayers, an economy that is not dependent upon the government, and which, I am confident, will ultimately spin off into more private entrepreneurship. As more money turns over within the Native American community, I think we will have more business opportunities developing.

We are here today to explore the impact that Indian gaming has in the tribal, local, and state economy and to see how changes to the Indian Gaming Regulatory Act of 1988 would impact what is a delicate balance that exists between the states and the tribes relative to those compacts.

I should add that I am pleased that in other hearings that Chairman Richardson has convened on this subject, we have heard from a variety of law enforcement representatives who have testified that Indian gaming has not been nor is especially susceptible to infiltration by organized crime. Still, we need to remain vigilant to make sure that Indian gaming is, in fact, clean and professionally run.

I am also interested in hearing from witnesses about a recent Interior Department report which indicated that there had been some instances where there have been management difficulties by management partners.

Mr. Chairman, again, I want to thank you for making this trip to South Dakota to hold this hearing. I know you have a very busy schedule, that you will be headed on back to Washington, in fact, still later today, and I also want to give a large thanks to our hosts, the Yankton Sioux Tribe, for their hospitality, which has always been great, and for permitting us to use this facility and for showing us a first-class facility.

I know that the Chairman has been to Connecticut to see the huge gaming casino there, he has been to some other places in the country, but I think that this facility here is perhaps more typical of what medium-size tribes in western areas are likely to develop.

I think you see more typical of what is the future of Indian gaming when you come to Fort Randall casino right here, and so, I think this is a very valuable experience. I think this is more likely what we will see developing around the country as Indian gaming takes off. It has challenges, but it also has opportunities, and we want to explore those.

I also want to thank the Chairman, as an aside, for his leadership in helping to create a Native American Subcommittee in the first place.

In the House of Representatives, we have gone for years without a forum for dealing with Native American issues. We had the good services of Mo Udall, who is Chairman of the Interior Committee, and he did a good job in many ways, but there was no formal structure for focusing national attention on the problems and the challenges that we face in Indian country.

Thanks in large part to Chairman Richardson's leadership—and I was pleased to work with him in that regard—we now have a formal Native American Subcommittee on the Natural Resources Committee, that done during a time when the big push is to eliminate subcommittees, and so, we have eliminated a lot of subcommittees in the House over the last couple of years in a big push to save money and to streamline things, but going against the current was the development of this particular subcommittee, and I think it is a very valuable forum that we have.

I would introduce on my left Mr. Mark Rubin, who is my Legislative Director in Washington, also deals with Native American issues in our Congressional office, and I know that Mark is pleased to be here to see and meet people firsthand, as well.

So, with that, Mr. Chairman, I yield back to you.

Mr. RICHARDSON. Thank you. I thank my colleague.

Let me just, before we start with our first witnesses, mention that both the Governor and Attorney General were invited to this hearing but, regrettably, declined. We do have a statement from the Attorney General that we will fully insert in the record at this time.

I would also like to ask unanimous consent to enter the Summary of the Indian Gaming Regulatory Act into the record.

[Prepared statement of Attorney General Barnett follows:]

STATEMENT OF MARK BARNETT  
ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA

Thank you for the opportunity to submit written testimony on the topic of "Indian Gaming Regulatory Act: The Economic Impact in South Dakota."

The hearings have been scheduled for April 22, 1994, and I received notification of the hearings only on April 18, 1994, so my comments are necessarily abbreviated.

Nonetheless, my view of the evidence is that gaming has been extremely profitable for the tribes. As of March 22, 1992, the Yankton Sioux Tribe casino in South Dakota was averaging \$252.87 per slot machine, per day, gross receipts. Its daily gross was \$45,516.60 for 180 machines. The Sisseton-Wahpeton Sioux Tribe casino, as of March 3, 1992, was averaging \$99.21 per day per machine for 180 machines, for \$17,857.80 per day. The Flandreau Sioux casino, for the four month ending June 30, 1991, averaged \$197.35 per machine per day, for 180 machines for an average daily gross of \$35,523. The collective daily gross of these three tribes was \$98,898.40 per day. By comparison, the average number of machines operating in Deadwood, South Dakota, for the eighteen month period ending September 1992 was 1901. The average daily gross receipt for each Deadwood machine for the same time-frame was \$51.53, for an average daily total of \$97,958.53. Consequently, as of the date of these statistics, the Yankton, Sisseton-Wahpeton and Flandreau Sioux Tribes were collectively grossing more money per day than all of the city of Deadwood is grossing from slot machines.

Furthermore, it is noted that compacts have been executed and casinos are up and running on the Lower Brule Reservation and the Crow Creek Sioux Reservation. In addition, compacts have been reached with the Standing Rock Sioux Tribe, the Rosebud Sioux Tribe and the Pine Ridge Sioux Tribe. There is little doubt that the Tribes collectively will gross far more from slot machines than the operations in Deadwood, South Dakota, for the foreseeable future.

Given these statistics, it would appear that the Federal Indian Gaming Regulatory Act has had a very beneficial economic impact with regard to Indian tribes. The State of South Dakota is not, however, in any position to analyze any adverse economic impact from gaming conducted by Indian tribes. Thus, for example, we are unable to tabulate social costs incurred by those who engage in compulsive gambling, those who redirect funds from investment opportunities to gambling, or those who otherwise misuse funds in casinos. Nor is the State of South Dakota able to quantify adverse economic impact, such as it may exist, on counties and localities which may have provided additional law enforcement support, additional roads or maintenance of roads, or undertaken similar activities. An unbiased comprehensive survey of such effects would indeed be useful.



Finally, I note that given the very positive economic impact of gaming on Indian tribes in South Dakota, and given the success of South Dakota in reaching compacts with all of its Indian tribes, South Dakota submits that it is not appropriate at this time to amend the Federal Indian Gaming Regulatory Act. The proposals to amend the FIGA which have been made by the tribes to date demand very extensive concessions from the states while also demanding that the states surrender the protections embodied in the Tenth and Eleventh Amendments to the United States Constitution. It is my view that the present system, while certainly not perfect, supplies the tribes with ample opportunities to engage in a very profitable activity, and should not be altered along the lines which the tribes have presently proposed.

Thank you for the opportunity to submit these remarks.\*

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\*These statistics used above are obviously not current. The Tribes do not supply current statistics to this office nor, we are informed, at least in one case, to members of its own tribe. It might be desirable for this Committee to request from the tribes themselves such statistics for review of the committee, the public, and the tribal members.

## SUMMARY OF THE INDIAN GAMING REGULATORY ACT

On October 17, 1988, the President signed into law the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C. 2701 et seq. The Act provides a system for the regulation of gaming on Indian lands by dividing gaming into three classes, establishing the National Indian Gaming Commission to regulate Class II gaming and authorizing compacts between tribes and states for the regulation of Class III gaming.

### Class I Gaming

Class I gaming includes social or traditional gaming which is played in connection with tribal ceremonies or celebrations. Class I gaming is regulated exclusively by the tribes.

### Class II Gaming

Class II gaming includes bingo and, if played at the same location as bingo, pull tabs, lotto, punch boards, tip jars, and instant bingo. Class II gaming also includes card games which are authorized by state law or not explicitly prohibited by state law and played at any location in the state. The card games must be played in conformity with state law or regulations regarding hours of operation and pot limits.

A tribe may engage in Class II gaming if the state in which the tribe is located permits such gaming for any purpose by any person, organization or entity. Class II gaming is regulated by the National Indian Gaming Commission and the tribe or solely by the tribe if issued a certificate of self-regulation.

### Class III Gaming

Class III gaming includes all gaming not included in Class I or Class II, such as casino-type games, gambling devices, pari-mutuel betting, etc.

Class III gaming is prohibited unless authorized by a tribal-state compact.

### Class III Gaming and Tribal-State Compacts

Class III gaming is lawful when it is authorized by a tribal ordinance approved by the chairman of the Commission, is located in a state that permits such gaming (whether for charitable, commercial, or governmental purposes), and is conducted in conformance with a tribal-state compact which has been approved by the Secretary of the Interior.

The Act authorizes an Indian tribe and the state in which the tribe is located to enter a compact governing gaming activities. The compact may include provisions concerning: the application of

tribal or state criminal and civil laws directly related to gaming, the allocation of jurisdiction between the state and the tribe, state assessments to defray the costs of regulating the activity, taxation by the tribe in amounts comparable to state taxation, remedies for breach of contract, standards for the operation and maintenance of the gaming facility, and any other subjects related to the gaming activity.

The state is not authorized to impose a tax or assessment (except assessments that are agreed to) upon a tribe or person authorized by a tribe to conduct a gaming activity. The state cannot refuse to negotiate a compact based on its inability to impose a tax, fee, or other assessment.

The federal districts courts are vested with jurisdiction over: actions by Indian tribes arising from the failure of a state to negotiate with a tribe seeking to enter a compact or to negotiate in good faith, any action by a state or tribe to enjoin a Class III activity which violates the tribal-state compact.

A tribe may initiate an action for failure to negotiate in good faith against a state only after the passage of 180 days from the date the tribe requested the state to enter negotiations for a compact. If the court finds that the tribe has failed to negotiate in good faith, it shall order the state and the tribe to conclude a compact within 60 days.

If the state and the tribe fail to conclude a compact within the 60-day period, the parties are to submit a court-appointed mediator their last best offers for a compact.

The Secretary of the Interior is authorized to approve tribal-state compacts. The Secretary may disapprove a compact if it violates: the Act, any other federal law that does not relate to jurisdiction over Indian gaming, or the trust obligations of the United States to Indians. The compact takes effect once the Secretary publishes a notice in the Federal Register that the compact has been approved.

#### Gaming on Indian Lands after Enactment

Gaming is prohibited on land acquired by the Secretary in trust for an Indian tribe after the date of enactment of the Act unless: (1) the land is within or contiguous to the tribe's existing reservation boundaries; or (2) if an Oklahoma tribe, the lands are within the tribe's former reservation or the lands are contiguous to other land held in trust or restricted status for that tribe. This prohibition does not apply if the Secretary determines that a gaming facility would be in the best interests of the tribe and its members and would not be detrimental to the local community and the governor of the state concurs with the Secretary's determination. This prohibition also does not apply to

lands: taken in trust as part of a settlement of a land claim, comprising the initial reservation of a tribe federally acknowledged, or restored to a tribe that has been restored to federal recognition.

### National Indian Gaming Commission

#### Composition

The Commission is composed of three full-time members with the Chairman appointed by the President and the other two members appointed by the Secretary of the Interior. Two of the three Commissioners must be members of federally recognized Indian tribes and no more than two members can be of the same political party. The Chairman of the Commission is Anthony J. Hope. The two Commissioners are Jana McKeag and Joel Frank.

#### Powers of Chairman

The Chairman is empowered to: (1) issue temporary closure orders; (2) levy civil fines; (3) approve tribal gaming ordinances; and (4) approve management contracts. The Chairman is also vested with such powers as the Commission may delegate.

#### Powers of the Commission

The Commission is vested with the following powers which cannot be delegated: (1) approve the annual budget; (2) adopt regulations for civil fines; (3) adopt an annual schedule of fees; (4) authorize Chairman to issue subpoenas; and (5) permanently close a gaming activity.

The Commission is vested with the following additional powers: (1) monitor gaming activities; (2) inspect gaming premises; (3) conduct background investigations; (4) inspect records related to gaming; (5) use the U.S. mails; (6) procure supplies; (7) enter into contracts; (8) hold hearings; (9) administer oaths, and (10) promulgate regulations.

#### Tribal Self-Regulation

A tribe may petition the Commission for a certificate of self-regulation if it has been engaged in a Class II activity continuously for a three-year period with at least one of the years being after the date of enactment of the Act and has otherwise complied with the Act. The Commission may issue the certificate if it is satisfied that the tribe has:

(1) conducted the gaming activity in a manner that has resulted in an honest accounting of all revenues, has a reputation for a safe and honest operation, and is generally free of evidence of criminal or dishonest activity;

(2) adopted and is implementing an adequate system for: accounting of revenues, investigation, licensing, and monitoring of employees, and investigation, enforcement, and prosecution for violations of its gaming laws; and

(3) conducted the gaming activity on a fiscally sound basis.

#### Management Contracts

The Chairman may approve a management contract if it provides: (1) adequate accounting procedures; (2) access by tribal officials to the gaming operations in order to verify the daily gross revenues and income; (3) a minimum guaranteed payment to the tribe that has preference over the retirement of development and construction costs; (4) a ceiling for the repayment of such costs; (5) a maximum term of 5 years or, at tribal request, 7 years; and (6) grounds and procedures for terminating the contract.

The management fee cannot exceed 30 percent of the net revenues unless the tribe requests a higher percentage. The Chairman may approve a higher percentage, not to exceed 40 percent, if a higher percentage is justified based on the capital investment and projected income.

All existing ordinances and management contracts, whether or not approved by the Secretary, must be submitted to the Chairman.

#### Commission Funding

The Commission is authorized to assess each game a fee which is based on a sliding fee scale from one-half of one percent to two and one-half percent on the first \$1,500,000 of gross revenues and up to five percent of amounts over \$1,500,000. The total amount of fees which the Commission can assess in any fiscal year is limited to \$1,500,000. The Commission is authorized to request appropriations in an amount equal to the annual assessment. Section 8. Thus, the commission's annual budget cannot exceed \$3,000,000 (\$1,500,000 from assessments and \$1,500,000 from appropriations). There is authorized to be appropriated in an amount not to exceed \$2,000,000 for the first fiscal year.



**PANEL CONSISTING OF JOHN AMENT, JOBS SERVICE REPRESENTATIVE-FIND/JTPA COORDINATOR, STATE OF SOUTH DAKOTA: AND, GREG HENDERSON, DIRECTOR, PLANNING & DEVELOPMENT DISTRICT III, YANKTON, SD**

Mr. RICHARDSON. Let me also announce that Senator Valandra will be a little bit late, so we are going to put him on a later panel, and finally, a logistical announcement, there is no smoking in this hearing room. The restrooms are upstairs. I wonder if this also includes cigar smoking. I am just kidding.

I want to again thank you for coming. We are very pleased to have our first witnesses. As I mentioned to you, we would like you to summarize in five minutes. We will start first with Mr. John Ament, Jobs Service Representative, FIND/JTPA Coordinator for the State of South Dakota. Mr. Ament, welcome. Please proceed.

**STATEMENT OF JOHN AMENT**

Mr. AMENT. Thank you, sir.

I guess I am going to be winging this. I am not sure as to why I need to be here, other than the fact that I have been here from the inception of this casino, mainly on the asking of Sam Lovell, who is present in the room, I believe, asking me to assist with developing job descriptions, et cetera, to build a viable workforce. I have done that since the beginning, say March of 1991, and continue to do so now.

With the casino's advent, we have seen a lot of changes in people, attitudes, working habits, and so on and so forth, as pertinent to persons in the job force.

With the hiring of people up here, it has also changed a lot in your state aid to families. It has decreased. I do not have anything in writing to submit for testimony, just on the facts that the State of South Dakota knows that.

Briefly, before the meeting, I met with Senator Allen, now running for the Governor of South Dakota. We addressed that to him at one time in the past, as to what the accomplishments are of the casino and how it affected the surrounding area. I have always been available to his people out here, to help them in work and/or training, and that is all I have to add at this point.

Mr. RICHARDSON. Well, Mr. Ament, we appreciate your being here, and the experience that you have had here on the ground is going to be most valuable to us when we ask you some questions, but we appreciate your being here.

Mr. Greg Henderson, Director of Planning and Development from District III, from Yankton, South Dakota. We know you have a very extensive and documented statement, which we will fully put in the record.

**STATEMENT OF GREG HENDERSON**

Mr. HENDERSON. Thank you, Mr. Chairman, Congressman Johnson. I appreciate the opportunity to be here today.

District III is a voluntary association of city, county, and tribal governments. My service area includes two reservations, which is Yankton Sioux and Lower Brule.

I would like to limit my remarks this morning, very briefly, to five factors that I would like to consider: economic, housing, social

services, law enforcement, and what I am calling intergovernmental cooperation.

Basically, this area is an intercultural, independent set of counties. We have experienced a lot of problems both with the environment and the economy over the last several years and, as a result, have lost a lot of our population.

Charles Mix County is one of the few counties in my service area that has actually gained population since the 1990 census, and again, it has not been a lot of population, but I do attribute part of that to the advent of Indian gaming and the number of employees that has been the result.

Some other economic indicators that I think are related to this facility and its impacts:

The number of people in the labor force in Charles Mix County has increased while, at the same time, a lot of the other counties in the surrounding area have lost people in the labor force.

The unemployment rate has gone down. Again, at the same time, its borders or neighboring counties, unemployment has gone up.

Taxable sales have also increased at a healthy pace.

One of the things that I think has been a direct symptom of the casino is the housing market in the area. We have experienced a real tightening of our housing, both single-family and apartments, and I have been told by various people that the apartments and the rental property are the ones that are affected most by casino employees. There are very few units for rent or for sale in this immediate area.

As a matter of fact, we did a recent newspaper survey. I believe there were only four homes and two apartments for rent or sale in this five-county area. So, it is very, very tight.

The other things that I would like to mention briefly again is the fact that, in the area of social services, for a long a time I think tribal residents were viewed as a dependent population. In other words, they were looked at by other people in the community and the region as being dependent upon outside sources of funding for their income, as well as for other social services.

I think the advent of the casino here has changed that perception, and there is some evidence, I think, to support that.

The number of people in this area, or in this county, that have been receiving AFDC payments has gone down over the last three years by 15½ percent. That has also translated into a reduction in dollars spent, as well, in that program.

The number of people receiving food stamps has gone down by 18 percent, and again, that translates into a savings of taxpayers' dollars.

The Charles Mix County auditor's office credits the casino for getting 52 families off of welfare in this county. That is very important, and those types of things have a tendency to filter out through the county, through the area, and change people's ideas and perceptions about tribal residents.

There are some negatives that have popped up regarding the casino.

In the area of law enforcement, some of the local law enforcement people believe there has been an increase in juvenile delinquency. They do not attribute that to necessarily the act of gam-



bling. They attribute it to possibly more stress on families, as people are working, not being around to supervise their children, those types of issues.

There has also been more traffic violations, and they also see more cases of domestic abuse.

The costs of these type of things often fall on local governments to bear. I know that Charles Mix County, for example, has to pay \$10,000 a month to support juvenile offenders prior to their final placement in treatment or detention centers.

So, again, there are a lot of things that show evidence that the casinos have a positive impact. There are also some areas that I think that can be improved in intergovernmental cooperation, and the Tribe, now that it has its own resources, it is perceived as being an active partner or a player.

I think there are a lot of things that we can do cooperatively with local government to improve this whole region. I have listed five of them: land use planning, Missouri River development and tourism, health care, solid waste, and housing.

So, again, I see a lot of potential there, and I am looking forward to working with the Tribe and my other units of government to make this a better region.

Thank you.

[Prepared statement of Mr. Henderson follows:]

**Statement Of:**

**GREG HENDERSON, DIRECTOR  
PLANNING & DEVELOPMENT DISTRICT III  
YANKTON, SOUTH DAKOTA**

**Before The:**

**SUB-COMMITTEE ON  
NATIVE AMERICAN AFFAIRS**

**Oversight Hearing on the  
Indian Gaming Regulatory Act, P.L. 100-497:  
The Economic Impact in South Dakota**

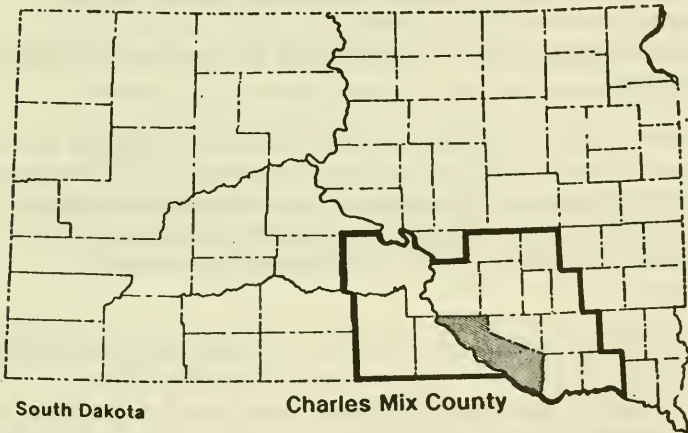
**Ft. Randall Casino Hotel  
Wagner, South Dakota**

**April 22, 1994**

Chairman Richardson, Congressman Johnson and members of the subcommittee; my name is Greg Henderson. I am the Director of Planning and Development District III. District III is a voluntary association of county, municipal and tribal governments. As a federally designated "Economic Development District," District III is involved in a wide variety of community and economic development activities. The association recently celebrated its 20th anniversary.

District III has a staff of 13 persons that work in a 14-county area (approximately 11,200 square miles). Our service region includes two reservations: Lower Brule and Yankton. My comments today will be focused on the area adjacent to the Ft. Randall Casino, in Charles Mix County.

#### DISRTICT III SERVICE AREA



I appreciate the opportunity to share information and insights, concerning the economic and social impacts of Indian gaming. Specifically, I want to briefly review five subjects:

1. Economic Factors;
2. Housing;
3. Social Services;
4. Law Enforcement; and
5. Inter-governmental Cooperation.

My comments will be based on local perceptions and realities. Perceptions represent images or concepts that may or may not be founded in fact. Regardless of their validity, perceptions will influence how people act. Realities include personal experiences and "objective evidence." They may be supported by "hard data," but not always. Realities also influence personal and governmental behavior.

My statements are not based on any current professional analysis. Indian gaming is so new that its impacts are still evolving. It is difficult to accurately evaluate something that is in such an early stage of development.

As you will hear from other sources, the Ft. Randall Casino has made definite improvements in the local economic situation. My service area is characterized by an over dependence on agriculture and significant out-migration. The farm crisis of the 1980's and the recent weather related disasters dramatically illustrated the need for economic diversification.

As a region, District III lost 5.6 percent of its population between 1980 and 1990. Eight of my 14 counties lost over 10 percent of their residents. Charles Mix County experienced a decline of 5.7 percent during the 1980's. Since the 1990 Census, the County has realized a .7 percent population gain. Although I cannot state that Indian gaming

is solely responsible, it certainly contributed to the positive turn around. The fact that other agriculturally dependent counties continued to lose people supports the idea that gaming has at least slowed the exodus. Another factor that should be considered is the higher birth rate of reservation counties.

Other evidence of gaming's impact on the economy, in Charles Mix County, includes:

1. An increased number of people in the labor force (7.6 percent increase between 1989 and 1992). All other District III counties experienced a decline over the same period.
2. A reduction in the general unemployment rate (4.7 percent in 1989 to 3.2 percent in 1992). The reservation unemployment figures changed even more dramatically. Most other non-reservation counties in the region experienced an increase in unemployment.
3. Total taxable and retail taxable sales experienced "healthy" increases (15.1 percent and 11.2 percent respectively). Approximately one-half of the District's counties experienced only single digit changes.
4. Per Capita personal income kept pace with the region. However, more recent figures (after 1991) should show significant improvements.

I have attached a set of tables which show Charles Mix County in comparison to the region.

The success of the Ft. Randall Casino has probably aggravated the area's housing problems. Our housing stock is relatively old, in comparison to the state average. The median age of housing in nine of my 14 counties exceeds 40 years. The state-wide figure is 29 years.

The nature of housing is also different in this area. We are more dependent upon single family units (77.2 percent vs. 69.1 percent) and have less apartment units (12.6 percent vs. 17.5 percent) than state-wide numbers would indicate.

The Casino employees have increased the demand for apartments and other rental property. The lack of rental units may also force non-casino workers, that were originally intending to rent, to purchase a home or mobile home. However, lower interest rates may have been a greater factor, than a lack of units, in home buying decisions.

Regardless of the reasons, the fact remains that the housing market is very tight. A review of five area newspapers, for the week of April 13th, found only four houses for sale and two apartment units for rent. The Yankton Sioux Tribe, as well as local governments, are trying to address the lack of affordable housing, but solutions may take several years to implement.

There has long been the public perception, in the region, that the Native American community is essentially a "dependent" population. In other words, government at the local, state and federal levels has unduly subsidized Tribal members.

I am not qualified to address the history of this issue and I do not know all of the facts surrounding government assistance. However, I do know that the image of Tribal dependency is improving. The number of county residents using various state administered, social service programs has declined between 1990 and 1993.

### **Aid to Families With Dependent Children (AFDC)**

- \* Numbers of recipients declined by 15.5 percent (457 to 380)
- \* Amount spent declined by 4.7 percent (\$463,106 to \$441,442)

### **Food Stamps**

- \* Number of recipients declined by 18.3 percent (1,311 to 1,070)
- \* Amount spent declined by 9.2 percent (\$878,947 to \$798,377)

In addition, Charles Mix County credits the Casino for getting 52 families off welfare. Neighboring counties have not experienced any noticeable changes, either way, in the number of welfare clients.

Area law enforcement personnel have noted concerns that they attribute, at least in part, to the Casino. The following problems may have more of a relationship to the increased number of persons working, and related family issues, than the act of gambling:

- \* Increase in juvenile delinquency
- \* More traffic violations
- \* Additional domestic abuse cases

The cost of these problems often falls on county government. For example, it costs Charles Mix County approximately \$10,000 per month to house and care for juvenile offenders, prior to their final placement in treatment or detention centers. This figure does not include court appointed attorney fees.

Law enforcement and other emergency services are severely limited in this area. The recent bus accident on Highway 46 illustrated the importance of maintaining adequate emergency response capabilities.



The final issue that I would like to address is inter-governmental cooperation. District III is a good example of how rural people work together to "tackle" regional priorities. The advent of Tribal gaming has placed the Yankton Sioux Tribe in a different position to influence development.

Prior to gaming, the Tribe's major perceived contribution was its access to "separate" federal grant programs. Now, the Tribe has its own independent resources that can be used cooperatively with other entities. The degree of this cooperation will always depend upon individual personalities and government interests. The potential is there to get beyond the institutional and personal barriers that have limited the effective use of resources. Examples of area-wide issues that are "ripe" for cooperation include:

1. Land use planning (zoning regulations)
2. Missouri River Development/Tourism
3. Health Care
4. Solid Waste Planning
5. Housing

Although differences of opinion are going to exist, direct dialog is becoming the rule, rather than the exception. I have had local officials tell me that they feel very positive about their relationship with Tribal government. I have also overheard statements that things have not really changed.

Personally, I believe that the interests of the Yankton Sioux Tribal community extend far beyond the success of the Ft. Randall Casino. The welfare of all area residents is dependent upon continued cooperation. Indian gaming has altered the "playing field." I am hopeful that it will also change the way we keep score. In other words, success for one group must be perceived as being positive for everyone. The future of this region is tied to all of our efforts.

POPULATION	CIVILIAN LABOR FORCE						UNEMPLOYMENT RATE	
	1989	1992	% Change	1989	1992	% Change	1989	1993
Aurora	3,400	2,994	-11.90%	1,434	1,383	-3.60%	1.6	1.9
Bon Homme	6,800	6,952	2.20%	3,476	3,317	-4.60%	1.5	3.6
Brule	5,100	5,614	10.10%	2,742	2,557	-6.70%	2.3	4.7
Charles Mix	9,200	9,265	0.70%	3,869	4,164	7.60%	4.7	3.2
Davison	17,400	17,475	0.40%	9,548	9,196	-3.70%	2.1	2.8
Douglas	3,900	3,651	-6.40%	1,710	1,531	-10.50%	2.8	2.8
Gregory	5,500	5,220	-5.10%	2,435	2,238	-8.10%	3.2	3.1
Hanson	3,300	2,954	-10.50%	1,548	1,320	-14.70%	2.9	5.4
Hutchinson	8,300	7,992	-3.70%	4,323	4,042	-6.50%	2.9	2.5
Jerauld	2,800	2,379	-15.00%	1,196	1,099	-8.10%	2.7	3.1
Lyman	3,600	3,660	1.70%	1,571	1,459	-7.10%	4.8	2.5
Sanborn	2,800	2,787	-0.50%	1,090	1,037	-4.90%	2.6	4
Tripp	6,900	6,895	-0.10%	3,415	3,067	-10.20%	2.5	3.3
Yankton	18,900	19,901	5.30%	11,048	10,895	-1.40%	2.5	2.4

TOTAL TAXABLE SALES (\$000's)	RETAIL TRADE TAXABLE SALES (\$000'S)						PER CAPITA PERSONAL INCOME	
	1989	1993	% Change	1989	1993	% Change	1989	1991
Aurora	12,499	13,668	9.40	6,463	6,384	-1.2	\$10,042	\$12,994
Bon Homme	25,504	26,922	5.60	15,358	15,670	2	12,035	13,759
Brule	30,889	37,127	20.20	20,872	24,581	17.8	12,117	14,337
Charles Mix	38,486	44,289	15.10	25,985	28,906	11.2	10,973	13,516
Davison	155,917	183,030	17.40	110,859	125,797	13.5	14,542	16,511
Douglas	12,880	13,946	8.30	7,829	8,124	3.8	10,531	12,834
Gregory	24,031	25,417	5.80	17,801	18,300	2.8	12,213	14,349
Hanson	5,039	4,875	-3.30	3,106	3,112	0.2	9,718	11,185
Hutchinson	36,299	40,626	11.90	24,509	25,836	5.4	13,684	16,117
Jerauld	8,594	9,003	4.80	5,643	5,764	2.1	13,078	16,159
Lyman	14,474	16,721	15.50	11,691	133,393	14.6	14,245	14,555
Sanborn	6,152	6,642	8.00	3,131	3,409	8.9	12,740	15,215
Tripp	43,397	48,318	11.30	31,007	30,930	-0.2	13,021	15,281
Yankton	143,278	182,431	27.30	106,512	132,647	24.5	13,339	14,809

Sources: South Dakota Sales and Use Tax Reporting System, Bureau of the Census, Bureau of Economic Analysis, South Dakota Dept. of Labor, State Data Center of South Dakota

Mr. RICHARDSON. Thank you.

Congressman JOHNSON.

Mr. JOHNSON. I want to thank both of you for taking time out of your very busy schedules to join us this morning.

Mr. AMENT, you made some reference to changes in attitudes and work habits. Would you elaborate a little bit on that, what you have seen transpire over the last couple of years?

Mr. AMENT. Well, I would say that, over the past 18 years, you see a lot of people not necessarily involved in anything, on the main street of Wagner, lot of people loitering or whatever you want to call it. You do not see that anymore.

You see people dressed up, going to work, just different things in people, the way they talk to you, and I have been working with them since—like I say, for 18 years, more specifically, with the casino, since 1991.

It is just a different view that I have. I have a vested interest in this area, because I am a tribal member. I see the attitudes toward me, toward other people coming into the area from different areas.

In the screening process, we are dealing with—Mr. Henderson referred to people from the outlying areas. We are dipping into Nebraska and a few other places, where people are coming in, and they feel good about working here. It is just the attitude overall.

Mr. JOHNSON. Would you say there is a greater degree of self-esteem among Native Americans themselves?

Mr. AMENT. You see that in the way they talk, the way they dress, the way their kids are, and usually, when you look at a person that has no self-esteem, you see that reflected in themselves and their children. That is gradually changing.

In reference to Mr. Henderson's point of cases closed on AFDC, the first year that I worked with the casino, we had 71 cases closed because of work. It is hard to find jobs out here. When a person is working and got that money in their pockets, they are going to change a lot of things, mainly attitudes. As a matter of fact, a lot of them drive better cars than I do.

Mr. JOHNSON. Well, that is encouraging, that there is both an increase in self-esteem and a higher expression of regard by the non-Indian community toward the Indian community, as well.

Mr. AMENT. Exactly.

Mr. JOHNSON. Mr. Henderson, this is a lot of new money circulating, to some degree, anyway, through the community. Do you see very much likelihood that this is going to lead to additional business development by Native American business-people, that for the first time there is a little bit of capital out there and a market?

Mr. HENDERSON. I believe so. I think you might have seen some evidence of that. I think Wagner has experienced some of that, Lake Andes as well, and I think you are going to see more of it as time goes by. There may be some other ones today that can give you better analytical evidence of that, but yes, I believe that is going to happen.

Mr. JOHNSON. So, you do not see the casino as just being the sole source of private economic activity, that it will spin off into a wider, broader range of economic activities.

Mr. HENDERSON. As a matter of fact, I look at the casino as just the catalyst to all these other things that are going to happen that may have a longer-term impact on this area.

Mr. JOHNSON. It is an opportunity for work habits and income.

In terms of the negatives, has there been a significant incidence of families gambling away the rent money, the grocery money, developing addictions of one kind or another, and experiencing that kind of problem?

Mr. HENDERSON. I have heard stories of individuals that have had problems, but I think, again, it is a behavioral thing that is individual by individual. I have never heard anybody express any concerns that it is a wide-range or a broad problem, no.

Mr. AMENT. I think this earning capability of the persons involved has probably brought the families closer together, if nothing else.

Mr. JOHNSON. I think that is a good point, that oftentimes we talk about family stress, but the—probably the number one causal factor to family stress is lack of income. That causes more family breakup and family stress than any other single item.

Mr. Henderson, as other tribes look at gaming possibilities—the Rosebud Sioux Tribe has plans in the works—from a planner's perspective, are you concerned that we may reach a saturation point, where there is a zero sum gain involved here, that the liability of the casinos themselves may jeopardized by overexpansion?

Mr. HENDERSON. I believe that that could well happen, and that is why I think it is more important, at this point, for the tribes to look long-range at what other industries can they spin off of the casino and plan their future, because yes, I believe there will come a point where the market just will not bear what they are trying to put out into it.

Mr. JOHNSON. Is there any mechanism for intertribal planning or coordination at all at this point that you see?

Mr. HENDERSON. I am not sure how effective things have been. On a regional level, I know that the Yankton Sioux tribe, for example, is an active participant on my board, and so, we try to do things cooperatively there, but as far as intertribal, I really could not speak to that.

Mr. JOHNSON. All right. I yield back to the Chairman.

Mr. RICHARDSON. If I could ask the witnesses, when they speak, to get their mikes closer to them, so those folks in the back can hear.

Mr. Ament, what kind of jobs does a casino produce, minimum-wage versus other higher-paying jobs, and is it your view that Native Americans are progressing here to management positions?

Mr. AMENT. I think so. Most of the people that—as a matter of fact, I have got a list here of the number of positions available, initially, that we put together. Since then, they have had a change in their payroll—in other words, upward.

The only two positions that I know of or am aware of is the two positions that would normally be funded by minimum wage plus tips, and normally, you will find that in any community, in your waitresses and so on and so forth, will receive a minimum wage plus tips, and that seems to be the thing, and I do not particularly like that, either here or anyplace else. You cannot live on \$4.25 an



hour, 40-hour week. Nobody can, you know, but the thing is here, they generate—and I would like to speak with some of the people that actually do that to find out exactly how much they make per week or how much they gross or how much they net.

Minimum wages were set at \$4.25 for two positions. The majority of the wages was between \$5.50 and \$6 per hour, which is within, you know—in this area, anyway, within the realm of possibilities of being able to survive.

Since that time, they have made, I believe, one or two different upward ranges in their salaries, which is good as far as I am concerned.

Mr. RICHARDSON. Mr. Henderson, you are an economic development specialist. How do the reservation economies in South Dakota compare with other economies in the state in terms of growth per capita?

Mr. HENDERSON. I think, in most indicators, they are lagging behind. As far as what they are dependent on, in this area, at least, they are similar to the other communities. They are agriculturally dependent in a lot of respects. They have suffered the same economic problems as the other communities, only I think it has been magnified more.

Mr. RICHARDSON. Well, I understand that this casino placed 600 people. So, obviously, it has been a quick-term boost to this county anyway. Is that correct?

Mr. HENDERSON. Absolutely. Not only this county but the surrounding counties, as well, yes.

Mr. RICHARDSON. What could we do, Mr. Ament? Why is it that we cannot get more businesses, private-sector businesses into reservations? What do you think we need to attract businesses here to the reservation? Do you think we need tax incentives? Why is it that we have such difficulty?

I know I have it in my Navajo reservation in New Mexico. We have a number of tax incentives that have been put into the budget reconciliations bill, and we have some tribes eligible for enterprise zones, but what, from your experiences, do we need to do to attract private-sector movement into reservation areas?

Mr. AMENT. I think, at this point, as I see it, the Yankton Sioux Tribe, as far as I know, is already working in that direction as to, you know, get different businesses involved in here, and Greg alluded to some of that stuff.

The co-sharing of different businesses, I guess, with the input of the Tribe itself would probably help a lot. They consider themselves or we consider ourselves as a sovereign nation. We should also have input as to what happens in the community. We should also be able to reach out and ask for other people to help us, too, and that is where you get other people coming in, other businesses coming in and contributing.

You see a workforce that is gaining. In other words, we drawing from other areas and bringing it here. With the workforce available, most businesses are really looking at the availability of manpower, and that is where we are coming from.

Mr. RICHARDSON. Mr. Henderson?

Mr. HENDERSON. I would say that you need to look beyond just job creation to look at your housing, your health care, your edu-

cation system, to lay a foundation that can be built upon, rather than just trying to get jobs in without all these other things to go with it. I think that is important.

Mr. AMENT. That particular thing that Greg brought up, which I did not think about, I guess, or am not quick enough to think about—we have a large problem with day care, we have a large problem with housing, you name it. There is a lot of things that contribute towards expansion. We do not have that yet, but they are working on it, and it is a slow process. We need total involvement on that.

Mr. RICHARDSON. I have concluded my questions. Does my colleague wish to——

Mr. JOHNSON. Just one last concern.

Mr. Ament, it has to be a particular challenge to have a business of this magnitude begin in a community where the pool of labor does not, in many cases, have extensive experience with private employment and all that goes into going to work. Has there been a pretty good continuity to employment within the gaming that you can tell? Do people come to work every day and work their hours? It has been a manageable situation?

Mr. AMENT. Yes. Most of these people have been brought in, they have been taught their jobs. They do have a lot of flexibility, which—in some places, you do not have that. However, I think it has added to their ability to come back and work and whatever.

Training is provided. When we first started out in this situation, we went to the occupational titles. We broke out job descriptions. We wrote job descriptions that would best fit the community or the people that we are working with. It was an acceptable situation, and it has worked.

Mr. JOHNSON. It would seem to me that key to the success—and this has been a successful casino—that key to that would be a strong training component to the employment process, and that is something—obviously, you must have worked with the Tribe to develop an in-house training program.

Mr. AMENT. That is an ongoing situation here. I am no longer involved directly in the training itself, because that is all set up within the casino itself, but it is an ongoing program for most of that.

Mr. JOHNSON. That is institutionalized within the casino itself at this point. So, they are running with the ball in terms of training. Very good. I have no further questions.

Mr. RICHARDSON. I want to thank our first panel for preparing very valuable testimony, and the Subcommittee appreciates your presence here.

**PANEL CONSISTING OF HON. DARRELL DRAPEAU, CHAIRMAN, YANKTON SIOUX TRIBE, ACCOMPANIED BY LARRY ARCHAMBEAU, JR., GAMING COMMISSION EXECUTIVE CHAIRMAN AND SECRETARY; HON. WILLIAM SCHUMACHER, PRESIDENT, FLANDREAU SANTEE SIOUX TRIBE, ACCOMPANIED BY GORDON JONES, SR., EXECUTIVE DIRECTOR, FLANDREAU SANTEE SIOUX TRIBE GAMING COMMISSION, AND DR. CARL E. EDINBURN, DIMENSIONS; RICHARD "TUFFY" LUNDERMAN, GAMING LIAISON, ROSEBUD SIOUX TRIBE; AND MARK VAN NORMAN, TRIBAL ATTORNEY, CHEYENNE RIVER SIOUX TRIBE**

Mr. RICHARDSON. We will now move on to panel number two. First, we are honored to have the Honorable Darrell Drapeau, Chairman, Yankton Sioux Tribe. He will be accompanied by Mr. Larry Archambeau, from the Gaming Commission, the Executive Chairman and Secretary. Also, the Honorable William Schumacher, President, Flandreau Santee Sioux Tribe; the Honorable Michael Jandreau, Chairman of the Lower Brule Sioux Tribe; Mr. Richard "Tuffy" Lunderman, Gaming Liaison from the Rosebud Sioux Tribe; Mr. Wayne Tapio, Council Representative, Oglala Sioux Tribe; and Mr. Mark Van Norman, the Tribal Attorney from the Cheyenne River Sioux Tribe. Accompanying Mr. Schumacher is Dr. Carl Edinburn, who is an economist, and Gordon Jones of the Flandreau Gaming Commission.

I know it seems like I asked the whole audience to step up to testify, but first of all, my thanks to Chairman Drapeau for his hospitality and for his very valuable service as we have developed many pieces of legislation, at least on our side of the aisle, on our side of the House of Representatives.

Gentlemen, as I mentioned, I would appreciate if you could summarize within the five minutes. Do not be intimidated by that little light in front of you. Just, when you get to the yellow—when the yellow comes, if you could just try to wrap up, we would appreciate that.

Chairman Drapeau, thank you, and please proceed.

#### **STATEMENT OF HON. DARRELL DRAPEAU**

Mr. DRAPEAU. I want to thank you this morning, Mr. Chairman, Mr. Johnson, other members that are here today. I am very proud to be here.

Mr. Richardson, it might interest you that I just spent a week-long time in Albuquerque, a very beautiful country.

Mr. RICHARDSON. Did you spend any money there, Chairman?

Mr. DRAPEAU. Yes. Yes, I did.

With that in mind, as you are well aware, there is a great need for economic development on Indian reservations, which are generally and have been generally classified as the poorest nations in this country. The success rate for projects aimed at economic growth on this reservation was low prior to the development of the Fort Randall casino.

We are very proud of the Fort Randall casino as it exists today. Like a lot of other things, it had its humble beginnings. It was an Air Force radar establishment prior to what it is today, and all of that is with good planning.



Since the casino became a reality in 1991, there have been some objectives that have been met, and the first objective is the expanding employment, and the second objective is to reduce the level of poverty among the Yankton Sioux people and surrounding communities.

The Fort Randall casino was immediately successful and expanded with the opening of a restaurant and lounge in May and a hotel in September of 1992.

In two years, the casino grew from 200 employees to a current employee figure of roughly 600 employees, and I am told that that number could increase to 650 throughout the summer.

Prior to the jobs made available by the casino, there were 36 percent of the employees who had been employed elsewhere, at low wages; 48 percent were not employed at all and had no income unless they qualified for welfare. The remaining 16 percent were students or were eligible for Social Security disability benefits.

There was in 1992 a study conducted on 71 AFDC recipients who were hired by the casino which showed that 84 percent did not return to the welfare rolls.

This casino has impacted not only the Tribe but also non-Indian entrepreneurs both on and off the reservation. There are also great impacts on surrounding counties, school districts, private industry, and a host of public interests.

The surrounding non-Indian towns of Wagner and Lake Andes have benefitted significantly from the casino in several ways. There are currently 171 non-Indians working at the casino. The tourism industry has brought new businesses. The Tribe has donated substantial sums of money to these communities and utilized local banks and construction companies.

With the casino itself, the Tribe has developed a four-year intern program with the goal to train tribal members for managerial positions. Eight tribal members have been selected for the program, which provides work experience as managers and classroom curriculum by which they earn college credits.

With casino profits, the Yankton Sioux Tribe is working to diversify the reservation economy. We hope to build capital and reduce a lot of the social problems that have hindered reservation development in the past.

At present, we are considering a marina on the Missouri River. We are in the process of completing and finding the funding for an alcohol and drug treatment center in Lake Andes.

Various members of the Tribal Council have worked with Charles Mix County to create a juvenile center that would serve not only non-Indians but tribal members, as well.

Finally, Mr. Chairman, due to the Fort Randall casino, state and local tax revenue receipts have grown substantially in this area alone.

Mr. RICHARDSON. Thank you very much, Mr. Chairman.

The next witness is the Honorable William Schumacher. Mr. President, thank you for coming. Please proceed.

#### STATEMENT OF HON. WILLIAM SCHUMACHER

Mr. SCHUMACHER. Thank you for inviting me. I apologize for not having a written statement ready for you, but I was informed of

this at the NIGA meeting in New Mexico, and we have had very little time to prepare for it, but we think we have enough information for you.

I also brought with me Gordon Jones, Sr., Executive Director of our gaming commission, and Dr. Carl Edinburn, who is conducting an economic impact study that should be ready shortly.

I would like to address three areas.

One of the areas is amendments to the IGRA. During the recent meeting in New Mexico, the general consensus is that we feel that there will be a move in Congress to amend the IGRA in June or July, and we are fearful that any amendments to the IGRA would be harmful to Indian tribes.

The general feeling among tribesmen from our Tribe is that the IGRA is intrusive to tribal sovereignty by involving the state in a process that is conducted on a reservation, namely gaming.

One of the areas that I would like to see—as to whether we are opposed to the amendments or for the amendments, it depends on what those amendments are.

You have non-Native Americans coming to Congress crying about a level playing field, and one of the things we see in the IGRA, in the compacting process, especially with the State of South Dakota, is the limitation of machines.

We are the first tribe to compact with the State of South Dakota. We are a tribe of 500 members, and when we negotiated with them and in their testimony, they said they would not hold that number accountable to other tribes of a larger size, but they did hold that number to other tribes, and in our tribe, what that equates to—you know, we can view that only as racial economic discrimination.

In the State of South Dakota, a non-Indian, a non-Native person can go to Deadwood or anywhere in the state and get 30 machines in 3 different locations or 90 machines per individual.

If you equate that on a tribal population basis, that is about a half-a-machine per individual. You take a larger tribe, like Cheyenne River Sioux Tribe, with 12,000 members, that works about 1 machine per 5 members, and we do not think that that is a level playing field, in our minds.

So, if the amendments would produce a level playing field, then we would be all in favor of it.

The second thing that I heard—in fact, as recent as yesterday—was from our tribal attorney, who attended the hearings, the Senate hearings in Washington, where the State of Nevada and New Jersey testified how wonderful their regulation is and how great their accountability is and everything else. However, they believe that there is not that same accountability or regulation in Indian country, and I would like to testify to the opposite of that.

I think there is a great amount of accountability and regulations in Indian country. We were the first to get the regulations published. We have cross-deputization with the Moody County Sheriff and the fire department. We pay for those services to the county, and we have an extremely good working relationship with the State of South Dakota's Gaming Commission.

The third area that I would like to address is the economic impact, and I am sure you have heard echoed throughout the country that gaming is the most successful endeavor ever undertaken by

Indians or the government to help Indian people. It has far surpassed anything else that has ever come to tribes.

In part of what we passed out, there is a 1992 economic impact study that Dr. Carl Edinburn prepared for the Tribe last year. He is currently working on another economic impact study that will be ready in a couple of weeks, and it clearly demonstrates and shows that the benefit of our gaming operation in Flandreau is not only beneficial to the Tribe, but it is extremely beneficial to the local communities.

There has been an 18.5-percent increase in taxable sales in Moody County and Flandreau alone. That does not include the other counties.

Our tribal employment—our labor pool is virtually exhausted. We are down to 2-percent unemployment, and those are the chronically unemployed. Seventy percent of the 339 employees that we have at the casino are non-Natives because of our small labor pool.

We have created—through the economic impact study—we have created 1,024 jobs in the surrounding area in casino-related businesses, and that is at no expense to the State or no expense to the Federal Government. It is a result of our casino operation.

It has allowed us to diversify our economic base. Since the casino opened, it gave us funds to be able to do our own farming. We used to lease out all our tribal land. We currently farm all our tribal land. We have a cattle program. We have done a joint venture with Hawk Multiplier. It has allowed us to take control of our own resources, and through that, it has also brought a relationship with other tribes, the Minnesota tribes and the other South Dakota tribes, that we have never had before in history.

We are a net importer of dollars into the State of South Dakota. Through a survey taken by our security forces, we can show that 70 percent of our customers are non-South Dakotans. That means a net import of dollars into the State of South Dakota, and yet, they still want to limit us as to what we can do in the casino.

During the questioning period, I would like Gordon Jones and Dr. Edinburn to answer economic or regulatory questions for us.

Thank you.

[Revenue impact study follows:]

Revenue Impact Study

Prepared for

Flandreau Santee Sioux Tribal Council

by

Capital Enterprises

May 15, 1992

## Section 1

OVERVIEW

This document contains the response to a proposal to study the presence of the Native American Community in Moody County, South Dakota, and the impact that this population has on state and federal monies that flow into and out of the county. The study was initiated by the Santee Sioux Tribal Council and was carried out by Capital Enterprises of Pierre, South Dakota.

Divided into three phases, the study proposed to complete the following:

Phase I

To determine and identify the amount of tax revenue (including utility, insurance premiums, cigarette, alcohol, etc.) collected in Moody County and paid to the State of South Dakota. This will include monies generated prior to and after the establishment of the Royal River Casino. This will include all licenses and fees connected with the gambling enterprise itself. This information will be tabulated in two month increments over a three year period.



Phase II

(a) To determine and identify the amount of monies received by institutions, organizations, and government agencies in Moody County.

(b) This phase will also include the identification of federal monies paid to private individuals.

(c) In both of the above, the investigators will attempt to determine the proportion of these monies that are generated as a direct result of the Native American residents and the existence of tribal headquarters in Moody County.

Phase III

In Phase III the investigator will determine the economic impact of tribe and its enterprises as it relates to the impact of federal funds and the amount of tax revenue generated for the state of South Dakota.

Using the data (monies, about 100,000, 100,000, 100,000) above the investigators will attempt to estimate this impact.

To complete the study, the investigators examined demographic data and public records of revenue/income to determine the amounts of state and federal monies related to the proportion of the Moody County Native American and non/Native American population.

A detailed written report complete with tabulated data will be presented in the next section. It is hoped that this report will provide Tribal leaders with an overview of economic impact.

## Section 2

### FINDINGS

This section will contain a summarized response to the three phases outlined in Section 1 above. It should be noted that the response and data related to the responses will be presented in the same sequence to help the reader process the information more easily. Note also that the written responses should not limit the readers in regard to determining extended meanings or implications regarding the data.

This section will also contain a short discussion of demographics which should provide the reader with an overview of the Native American presence in Moody County.

#### Demographics Summary

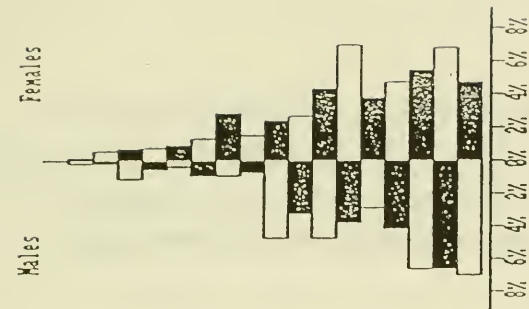
Appendix A contains a summary of population and housing in Moody County, South Dakota, as reported in the 1990 census. It will be noted that the population of the county is 6,507 of which 527 or 8.1% are Native American, while

91.5% are white. The remaining .4% include Black, Asian and Hispanic (9 persons total).

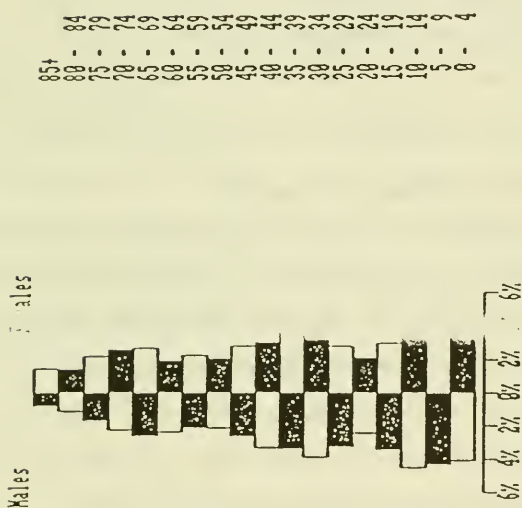
Although there is a marked difference in regard to numbers (8.1% - 91.5%) between Native Americans and whites there is even a more interesting difference in regard to the age breakdown of the two groups. Figure 1 contains graphic representations of population by age. It will be noted that whereas the white population maintains a generally stable profile (ranging from 2 - 4% for each of the 5 year intervals) the American Indian profile is very different. Interesting groupings include children ages 0-4, 5-9, and 10-14 as well as females between the ages of 25 and 29, all of which surpass the the 6% range.

The largest contrast between white and American Indians is the proportions noted for persons aged 45-85. Strict examination of the census data reveals that 35% of the white population and only 14% of the American Indian population are contained in these age groupings.

One commonality to note is that for both populations there is an obvious reduction at ages 20-24. This can probably be accounted for by the fact that college attendance and/or military service is generally realized at this life juncture..



Total Population: 527 MOODY -- AMERICAN INDIAN 1990



Total Population: 5,951 MOODY -- WHITE 1990

Figure 1. Graphic representation of Moody County population by age.

Two of the more outstanding conclusions that must be drawn for these profiles is that the numbers of Indian youth is increasing while the numbers of the older persons is in decline. Both of these phenomena demand further study.

#### Housing

An additional general statistic (See Appendix A) is related to housing. Native Americans occupy 158 of the 2,398 housing units in Moody County. Nearly all of the remaining units (2,234) are occupied by whites. Quick calculation reveals that the average Indian household contains 3.34 occupants as compared to 2.48 for the whites.

#### Phase I: State Tax Revenue

The proposal as written included an investigation of sales, gasoline, utility, cigarettes and liquor taxes paid in Moody County and collected by the State of South Dakota. The source for this information (The Business Research Bureau at the University of South Dakota) revealed that taxable sales was the only one of these taxes that was collected and reported at the county level. Gasoline, cigarette, and liquor tax revenue is paid by the jobber (wholesaler). Therefore in regard to Moody County these taxes are probably collected in Sioux Falls (Minnehaha County) or Brookings (Brookings County) where many of the gasoline, cigarette, and liquor jobbers do business.



Sales taxes are reported by county and hence accurate tabulations are available in public record. Gasoline taxes can be estimated based on the proportion of the number of cars in the state that are licensed in Moody County. This phase will therefore address revenues associated with these two taxes.

#### Sales Tax Revenue

Table 1 contains a summary of bi-monthly and annual taxable sales for Moody County for the three years 1989, 1990, and 1991.

As can be noted, little change was evidenced from 1989 to 1990 during the first four bi-monthly reporting periods. Royal River Casino opened in October 1990 and began remitting sales tax in November of the same year. Taxable sales were increased in Moody County by 10.33% and 13.33% during the next two reporting periods (September - October and November - December 1990). This trend continued in 1991 with increases of 12.76% in January - February, 5.31% in March - April, 8.49% in May - June and 12.11 % in July - August. At this point, the impact that can be attributed to Royal River Casino leveled off and no gain was evidenced in the next two reporting periods (September - October and November - December, 1991).

TABLE 1  
81-MONTHLY, ANNUAL AND OVERALL TAXABLE SALES  
MOODY COUNTY, SOUTH DAKOTA 1989 - 1990.\*

Months	1989	1990	X Change 89 - 90	1991	X Change 90 - 91	NET Change 89 - 91
Jan - Feb	\$ 5,196,393	\$ 5,288,931	+ 1.78	\$ 5,963,652	+ 12.76	+ 14.77
Mar - April	5,068,792	4,937,391	- 2.61	6,199,538	+ 5.31	+ 2.56
May - June	4,759,506	4,861,468	+ 2.14	5,274,315	+ 8.49	+ 10.82
July - Aug	4,756,070	4,814,124	+ 1.22	5,395,901	+ 12.11	+ 13.45
Sept - Oct	5,044,099	5,565,030	+ 10.33	5,557,053	- .14	+ 10.17
Nov - Dec	5,137,469	5,835,674	+ 13.33	5,743,999	- 1.67	+ 11.81
TOTALS	29,963,329	31,302,616	+ 4.47	33,134,458	+ 5.85	+ 10.58
4X Total tax	1,198,533	1,252,105		1,326,378		
3X Tax to State**	<del>888,899</del>	<del>900,076</del>		<del>964,034</del>		
8X Share***	<del>71,911</del>	<del>75,120</del>		<del>79,523</del>		
	95,882. <sup>45</sup>	100,168. <sup>45</sup>		106,631. <sup>45</sup>		

\* Source: Business Research, School of Business, University of South Dakota.

\*\* Flandreau City/Co. retains 1X for collecting tax.

\*\*\* Projected annual share based on 8X Native American population of Moody County.

The real impact overall is evidenced in the % Net Change column. It is interesting to note that sales reported for March - April are low in all three of the years reported.

Based on arrangements between the State of South Dakota and other tribal entities, sales tax revenues are returned to the tribe conditional to the percentage of Native Americans residing in the county. Using the established figure of 8% as reported above (See Demographics) the estimates were computed and included in this table. Had a similar arrangement been established between the Santee Sioux Tribe and the State of South Dakota projected sales tax returns would have amounted to \$71,911.00 in 1989, \$75,126.00 in 1990, and \$79,523.00 in 1991.

#### Gasoline Tax Revenue

This amount can only be estimated. There are 6,689 automobile/trucks registrations in Moody County. This constitutes 1% of the 656,937 state registrations reported for 1991.

Motor fuel dealers tax total for 1991 was equal to \$61,321,807.00. Therefore the estimated amount generated by Moody County vehicles (1%) would be \$613,128. Using the same 8% population factor, \$49,057 of motor fuel tax could be attributed to Native American car owners.

## Phase II

This phase of the investigation was focused on federal monies received by institutions, organizations and government agencies in Moody County.

Table 2 contains a summary of all federal monies impacting Moody County during Fiscal Year 1991. As can be noted a total of \$25,574,000 was realized from grants, salaries and wages, direct payments (social security, veterans pensions, USDA payments etc.) procurement (goods and services purchased in Moody County by the U.S. Government) and other expenditures. In regard to the proposal conditions to identify federal monies paid to private individuals it should be recognized that the most obvious estimate of this would be contained in the categories of Salaries and Wages (\$5,003,000) and Direct Payments (\$11,944,000) for a total of \$16,947,000. This is not to say that payments to private individuals is not included in each of the other categories. Additional income (Direct Loans) was also included in this table.

Phase II also directed the investigators to attempt to determine the proportion of federal monies that are generated as the direct result of the Native American presence and the existence of Tribal Headquarters in Moody

TABLE 2

TOTAL FEDERAL IMPACT DOLLARS  
MOODY COUNTY, SOUTH DAKOTA (FY 1991).\*

Source	Amount
Grant Awards	\$ 4,283,000
Salaries and Wages	5,003,000
Direct Payments to Individuals	11,944,000
Procurement Contract Awards	856,000
Other Federal Expenditures	<u>3,488,000</u>
TOTAL Expenditures or Obligations	<u>25,574,000</u>
Other:	
Direct Loans	<u>4,502,000</u>
Total Impact to Moody County	<u>30,076,000</u>

\* Source: Consolidated Federal Funds Report (FY 1991) U. S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census (OMB) Report #CFFR/91-1 pp. 58-59.



County. Data dealing with dimension was reported in Tables 3-5.

Table 3 contains a summary of federal impact dollars directly attributed to the Native American and Tribal Headquarters presence in Moody County. As can be noted \$12,753,800 was generated in Fiscal Year 1991. This amount is nearly half (49.9%) of the total federal monies generated (See Table 2). Since the remaining 50.1% can be attributed to other persons who may well include Native Americans, it is probably safe to say that more than half of the federal impact dollars in Moody County are due to the Native American presence.

To probe the questions raised in Phase II of the proposal a bit further, additional tables were prepared. In the interest of gaining a larger perspective of Moody County as related to South Dakota counties of a similar size, the investigation was conducted on a population of 6507 (the population of Moody County) plus or minus 1000 for the selection process. This resulted in the selection of 11 other counties whose population range included a low count of 5485 (Brule County) to a high population count of 7353 (Fall River County). To further refine the estimation process, per/capita income figures were determined to reduce error as much as possible. To be certain this per/capita

TABLE 3

FEDERALLY FUNDED DIRECT IMPACT DOLLARS CLEARLY  
 ATTRIBUTED TO NATIVE AMERICAN PRESENCE IN  
 MOODY COUNTY, SOUTH DAKOTA (FY 1991).\*

Source	Amount
Indian School and Tribal Operations (BIA)	\$ 9,700,000
Public School Impact Aide	89,000
Santee Sioux Tribe Health Clinic (IHS)	1,164,800
Santee Sioux Tribe Housing Authority	<u>1,800,000</u>
TOTAL	<u>12,753,800</u>

4%	Maximum Potential Sales Tax Impact	510,152
3%	Less Allocation to Flandreau City (1%)	382,614
8%	Native American Population of Moody County Projected share of 3%	<del>30,809</del>

40,812.<sup>00</sup>

\* Source: Santee Sioux Tribal Council

figure does not relate in anyway to actual distribution of funds. It is only used to get a more accurate picture of the varied income/population variables for the 12 counties summarized.

In reading Table 4 it should be noted that four of the counties are impacted by federal monies to a large degree. These counties include Custer, Dewey, Fall River and of course Moody County. Various Federal Agencies have impacted each of these counties including the National Parks Service and National Forest Agencies in Custer and Fall River counties. Fall River County is also impacted by funds generated by the existence of a Federal Veterans Administration Hospital located in Hot Springs, the county seat. The Federal impact in Dewey and Moody County is generated by the Native American population and BIA affiliated agencies and services (See Table 3). The counties of Bon Homme, Brule, Day, Gregory, Kingsbury, McCook, Tripp and Walworth are more typical and hence would be expected to receive a more typical allotment of federal funds. It could generally be assumed that the majority of funds received in Bon Homme, Brule, Day, Gregory, Kingsbury, McCook, Tripp and Walworth are generated via agricultural subsidies, other USDA sources including U.S. Postal services and salaries.

TABLE 4

PER/CAPITA FEDERAL IMPACT IN TWELVE SELECTED  
COUNTIES IN SOUTH DAKOTA (FY 1991).\*

County	Population	Total Federal Impact (FY 91)	Per/Capita Estimate
Bon Homme	6800	\$ 23,053,000	\$ 3390.15
Brule	5485	19,621,000	3577.21
Custer**	6179	25,623,000	4146.79
Day	6978	37,972,000	6145.33
Dewey**	5523	37,117,000	6720.44
Fall River**	7353	49,413,000	6720.11
Gregory	5359	20,459,000	3817.69
Kingsbury	5925	33,451,000	5645.74
McCook	5688	18,829,000	3310.30
Moody**	6507	25,574,000	3930.23
		25,574,000	4149.48
Walworth	6087	24,672,000	4053.23

\* Source: Consolidated Federal Funds Report (FY 1991) U. S. Department of Commerce Economics and Statistics Administration, Bureau of the Census (OMB) Report #CFFR/91-1 pp. 56-59.

\*\* Source: County with significant federal impact i.e. National Park, National Forest, Native American (BIA) Services, V.A. Hospital etc.

In regard to the per/capita income in the four "special" counties the average is \$5379.39 for every man, woman and child residing in the county. Funds generated in both Custer and Moody County are quite a bit less than in the other two. This can perhaps be explained as follows. Moody County is geographically small in size and hence probably more dependent on monies generated from the Native American presence than from agriculture. Custer County is largely forested, contains large amounts of public (National Park and Forest) land and therefore also has limited involvement with agriculture. Like Moody County, there appears to be a tendency to depend upon non-agricultural federal income.

In regard to the other eight counties the average per/capita income is \$4216.14. Moody County with income of \$3930.23 is still below the average of the eight typical counties. If the income generated by the Native American Community presence in Moody County the total amount of federal monies would be seriously reduced. If we were to subtract the 49.9% proportion as noted in Table 3 above, the total received would be limited to approximately \$1969.05 per person.

Table 5 gives a much more clearly defined picture of the impact of federal monies. Using the same 12 counties,



TABLE 5

PER/CAPITA FEDERAL SALARY IMPACT IN TWELVE  
SELECTED COUNTIES IN SOUTH DAKOTA (FY 1991).\*

County	Population	Total Federal Salaries (FY 91)	Per/Capita Estimate
Bon Homme	6800	\$ 1,447,000	\$ 212.79
Brule	5485	1,497,000	273.93
Custer**	6179	5,286,000	855.48
Day	6978	2,593,000	371.59
Dewey**	5523	8,712,000	1577.03
Fall River**	7353	17,570,000	2389.50
Gregory	5359	1,271,000	237.17
Kingsbury	5925	2,167,000	365.73
McCook	5688	1,423,000	250.18
Moody**	6507	5,003,000	768.86
		1,535,000	221.69
Walworth	6087	1,541,000	253.16

\* Source: Consolidated Federal Funds Report (FY 1991) U. S. Department of Commerce Economics and Statistics Administration, Bureau of the Census (OMB) Report #CFFR/91-1 pp. 56-59.

\*\* Source: County with significant federal impact i.e. National Park, National Forest, Native American (BIA) Services, V.A. Hospital etc.

the data in Table 5 deals with federal salaries. It will be noted that the total amount of salary dollars generated per/capita in the four special counties is significantly higher than in the other eight ("agricultural" counties). The V.A. Hospital in Fall River County apparently has the largest impact. The average per/capita income in the eight other counties is \$278.28. If we were to assume that this amount was due to typical or average agriculture payments and postal workers salaries, and that the same amount was paid to USDA and postal employees in Moody County, we could predict the per/capita impact of federal salaries paid to persons working in or with Native Americans. Taking the per/capita total of \$768.86 less the \$278.28 average we would have a per/capita total of \$459.58 per/capita income generated by salaries alone. This estimated amount constitutes 64.5% of the total federal salaries reported for

### Phase III

Determining and estimating the impact that the presence of Indian people and the Santee Tribal Headquarters have on the Flandreau community and Moody County was the projected outcome of Phase III.

Data presented in the summaries of Phases I and II above do substantiate a definite impact in regard to sales

and gasoline tax as well as federal funds flowing into Moody County. In review of the above they consist of the following:

1. The direct impact of Royal River Casino can be traced in the bi-monthly reports of taxable sales. There is a direct 10% elevation of sales beginning during the month of opening. This was increased to over 13% in the ensuing period when the Casino itself began paying tax. This rise in taxable sales continued on over the twelve month period and settled at a plateau beginning on the 13th month. The figures are picture perfect.
2. Gasoline Tax income for Moody County was estimated to be \$613,218.00 using the 8.1% population factor \$49,057.00 of this amount could be coming from purchases made by Native Americans or in the pursuit of BIA or tribal affairs business activities.
3. It was determined that 49.9% of the federal funds impact Moody County could be directly and accurately accounted for by the Tribal Office as being generated due to the presence of Native Americans in Moody County.

4. Comparisons drawn using eleven other South Dakota counties of similar size provided further evidence of federal funds impacting Moody County because of the presence of Native Americans. This was especially true in regard to salary income where an estimated 64.5% of the federal salaries paid in Moody County are probably related to the Native American community. Also, bear in mind that this does not in anyway include the salaries being generated as a result of the establishment of the Royal River Casino.

In all of the above it is important to note that Moody County is small in area relative to the surrounding counties. As a result of this and due to the proximity of Sioux Falls, Pipestone, and Brookings, many Moody County residents shop, bank and seek entertainment in surrounding areas. Sales and gasoline tax expended in this manner will never be traced to Moody County totals. One can probably speculate with relative confidence that a good deal of the purchasing power generated by the new casino is finding its way into the sales tax revenues of Lake, Minnehaha, and Brookings counties. It is therefore easy to project that the figures reported above in regard to state taxes are relatively conservative.

Appendix A

1990 Census Population and Housing

Moody County, South Dakota



990 Census of Population and Housing	Page
040 South Dakota	
050 Moody County	
Total population.....	6,507
SEX	
Male.....	3,263
Female.....	3,244
AGE	
Under 5 years.....	533
5 to 17 years.....	1,470
18 to 20 years.....	194
21 to 24 years.....	249
25 to 44 years.....	1,766
45 to 54 years.....	606
55 to 59 years.....	274
60 to 64 years.....	264
65 to 74 years.....	629
75 to 84 years.....	388
85 years and over.....	134
Median age.....	34.1
Under 18 years.....	2,003
Percent of total population.....	30.8
15 years and over.....	1,151
Percent of total population.....	17.7
HOUSEHOLDS BY TYPE	
Total households.....	2,398
Family households (families).....	1,755
Married-couple families.....	1,538
Percent of total households.....	64.1
Other family, male householder.....	67
Other family, female householder.....	150
Nonfamily households.....	643
Percent of total households.....	26.8
Householder living alone.....	582
Householder 65 years and over.....	355
Persons living in households.....	6,422
GROUP QUARTERS	
Persons living in group quarters.....	85
Institutionalized persons.....	74
Other persons in group quarters.....	11
RACE AND HISPANIC ORIGIN	
White.....	5,951
Black.....	10
Percent of total population.....	0.2
American Indian, Eskimo, or Aleut.....	527
Percent of total population.....	8.1
Asian or Pacific Islander.....	13
Percent of total population.....	0.2
Other race.....	6
Hispanic origin (of any race).....	13
Percent of total population.....	0.2

90 Census of Population and Housing	Page
040 South Dakota	
050 Moody County	
Total housing units.....	2,666
CUPANCY AND TENURE	
Occupied housing units.....	2,398
Owner occupied.....	1,707
Percent owner occupied.....	71.2
Renter occupied.....	.691
Vacant housing units.....	268
For seasonal, recreational, or occasional use.....	35
Homeowner vacancy rate (percent).....	1.9
Rental vacancy rate (percent).....	8.1
Persons per owner-occupied unit.....	2.76
Persons per renter-occupied unit.....	2.48
Units with over 1 person per room.....	54
ITS IN STRUCTURE	
1-unit, detached.....	2,197
1-unit, attached.....	16
2 to 4 units.....	163
5 to 9 units.....	50
10 or more units.....	59
Mobile home, trailer, other.....	181
LUE	
Specified owner-occupied units.....	941
Less than \$50,000.....	721
\$50,000 to \$99,000.....	204
\$100,000 to \$149,000.....	12
\$150,000 to \$199,999.....	3
\$200,000 to \$299,999.....	1
\$300,000 or more.....	0
Median (dollars).....	33,100
INTRACT RENT	
Specified renter-occupied units paying cash rent.....	484
Less than \$250.....	400
\$250 to \$499.....	78
\$500 to \$749.....	0
\$750 to \$999.....	0
\$1,000 or more.....	0
Median (dollars).....	165
RACE AND HISPANIC ORIGIN OF HOUSEHOLDER	
Occupied housing units.....	2,398
White.....	2,234
Black.....	3
Percent of occupied units.....	0.1
American Indian, Eskimo, or Aleut.....	158
Percent of occupied units.....	6.6
Asian or Pacific Islander.....	2
Percent of occupied units.....	0.1
Other race.....	1
Hispanic origin (of any race).....	2
Percent of occupied units.....	0.1

Age Group	Total	Males	% Males	Females	% Females
0 - 4	62	37	7.02	25	4.74
5 - 9	71	35	6.64	36	6.83
10 - 14	64	35	6.64	29	5.50
15 - 19	47	22	4.17	25	4.74
20 - 24	35	15	2.85	20	3.80
25 - 29	57	20	3.80	37	7.02
30 - 34	48	25	4.74	23	4.36
35 - 39	31	17	3.23	14	2.66
40 - 44	38	25	4.74	13	2.47
45 - 49	12	4	0.76	8	1.52
50 - 54	20	5	0.95	15	2.85
55 - 59	12	5	0.95	7	1.33
60 - 64	7	2	0.38	5	0.95
65 - 69	7	3	0.57	4	0.76
70 - 74	10	6	1.14	4	0.76
75 - 79	4	1	0.19	3	0.57
80 - 84	2	1	0.19	1	0.19
85+	0	0	0.00	0	0.00
Total:	527	258	48.96	269	51.04

*Native American*

e Group	Total	Males	% Males	Females	% Females
0 - 4	465	241	4.05	224	3.76
5 - 9	518	257	4.32	261	4.39
0 - 14	512	268	4.50	244	4.10
5 - 19	385	205	3.44	180	3.02
0 - 24	273	145	2.44	128	2.15
5 - 29	359	192	3.23	167	2.81
0 - 34	424	229	3.85	195	3.28
5 - 39	419	202	3.39	217	3.65
0 - 44	380	197	3.31	183	3.08
5 - 49	324	157	2.64	167	2.81
0 - 54	249	125	2.10	124	2.08
5 - 59	262	127	2.13	135	2.27
0 - 64	257	141	2.37	116	1.95
5 - 69	316	155	2.60	161	2.71
0 - 74	292	134	2.25	158	2.66
5 - 79	229	99	1.66	130	2.18
0 - 84	153	68	1.14	85	1.43
5+	134	48	0.81	86	1.45
tal:	5,951	2,990	50.24	2,961	49.76

*white*

## Phase II

This phase of the investigation was focused on federal monies received by institutions, organizations and government agencies in Moody County.

Table 2 contains a summary of all federal monies impacting Moody County during Fiscal Year 1991. As can be noted a total of \$25,574,000 was realized from grants, salaries and wages, direct payments (social security, veterans pensions, USDA payments etc.) procurement (goods and services purchased in Moody County by the U.S. Government) and other expenditures. In regard to the proposal conditions to identify federal monies paid to private individuals it should be recognized that the most obvious estimate of this would be contained in the categories of Salaries and Wages (\$5,003,000) and Direct Payments (\$11,944,000) for a total of \$16,947,000. This is not to say that payments to private individuals is not included in each of the other categories. Additional income (Direct Loans) was also included in this table.

Phase II also directed the investigators to attempt to determine the proportion of federal monies that are generated as the direct result of the Native American presence and the existence of Tribal Headquarters in Moody



Flandreau Tribal Commission  
on  
Gaming

P.O. Box 351  
Flandreau, SD 57028

605-997-2270 Voice  
605-997-5169 Fax

February 04, 1994

Mr. Anthony J. Hope  
National Indian Gaming Commission  
West 4201 Cahedral  
Washington, D. C. 20016

Dear Mr. Hope:

We have reviewed the Department of Interior, Office of Inspector General, Audit Report #94-I-113, entitled "Issues Impacting Implementation of the Indian Gaming Regulatory Act" and are reporting our finding as they relate to our Tribal Commission and our local Royal River Casino; particularly if we are coordinating our regulatory and oversight responsibilities under IGRA....and thereby not subjecting revenues to increased risk of loss or theft.

Please find an enclosed report and comments concerning compliance of the Royal River Casino on the Flandreau Santee Sioux Reservation as reviewed by the Flandreau Tribal Commission on gaming and the Flandreau Santee Sioux Tribe.

Should you have any questions please feel free to contact our office.

Sincerely,



Gordon Jones  
Executive Director

cc: Senator Tom Daschle  
Senator Larry Pressler  
Congressman Tim Johnson

Susan Carletta  
National Indian Gaming Commission



Flandreau Tribal Commission  
on  
Gaming

P.O. Box 351  
Flandreau, SD 57028  
605-997-2270



January 24, 1994

FSST Tribal Executive Committee  
FSST Commission on Gaming  
Flandreau, SD 57028

You have requested that we review the Department of Interior, Office of Inspector General, Audit Report #94-I-113, entitled "Issues Impacting Implementation of the Indian Gaming Regulatory Act" and report our findings as they relate to your Commission and the Royal River Casino; particularly if you are coordinating your regulatory and oversight responsibilities under IGRA -- and thereby not subjecting revenues to increased risk of loss or theft.

Below is our report and comments to you concerning your compliance:

**Report and Attachments:** Neither IGRA nor the regulations required adoption of standard industry controls over casino gambling, thereby subjecting revenues to increased risk of loss or theft. The report recommends that the Chairman of NIGC adopt minimum internal control standards for the conduct of Class III Gaming through the adoption of gaming controls, practices and standards.

Does the Indian Gaming Regulatory Act need changing to require Indian casinos to adopt standard internal controls over Class III gaming?

Should the Act be modified to ensure Indian Casino's comply with established regulations regarding the accounting for gaming

Has there been an implementation of regulations adopting standard industry controls over this Casino's gambling?

**Response:** Although minimum internal control standards for the conduct of Class III Gaming should be adopted at all Indian Casinos covering gaming controls, practices, and standards; the Royal River Casino, Flandreau Santee Sioux Tribe (FSST) and FSST Commission on Gaming have established Internal Control Standards. The FSST commission has studied the Internal Control Standards and Revenue Reporting Manuals used by the Nevada Gaming Commission, the regulations of the Nevada State Gaming Control Board, and the rules and regulations of the South Dakota Commission on Gaming as well as standards available through associations with members of NAGRA (North America Gaming Regulators Association - both the Commission and its accounting firm are members of NAGRA). After studying these documents, the FSST Commission on Gaming has drafted and implemented its own Internal Control and Revenue Reporting Manual as well as its own Audit Manual.

Not only has this Commission implemented these procedures, it aggressively monitors the procedures through unannounced observation audits.

**Report and Attachments:** Have industry standards for controlling the Casino receipts been implemented in the Casino -- such as the standards used in New Jersey and Nevada.

Do these standards include:	Response:
Licensing and registration	yes
Operating Requirements	yes, covered in Revenue Reporting Manual
Accounting requirements	yes, covered in Revenue Reporting Manual
Other reporting, record keeping	covered in Revenue Reporting Manual
Approval requirements	yes

**Response:** This Commission requires background investigations on every person applying for a gaming license and has established rules for the operation of table games and the certification of gaming devices such as slot machines. This Commission even has its own Kobetron machine. In addition, procedures have been adopted to control shift change procedures for the gaming tables as well as procedures for opening a table for play, the removal of cash boxes from tables, the removal of coins from slot machines, for counting daily cash receipts and the requirements and procedures for video surveillance.

**Report and Attachments:** Has there been effective coordination among Federal, State and Tribal governments?

The Assistant Secretary - Indian Affairs in her response to the Audit Report states that to some extent, there has been ineffective coordination among Federal, State and Tribal authorities, which may be particularly attributable to a lack of a clear understanding by all concerned of their respective responsibilities.

**Response:** This Casino, Tribe and Commission have enjoyed cooperation with Federal, State and Tribal authorities. Credit need be given to the prior experience of the Commission's executive director who has personally worked in each of the other departments before being appointed as executive director of the Flandreau Santee Sioux Commission on Gaming. The Executive Director has taken measures to keep all agencies and concerned parties informed of any local activities.

For example, the Executive Director welcomes visits and often calls the South Dakota Commission on Gaming to consult with them. He has visited their primary office at Pierre, SD as well as their field office at Deadwood and has accompanied them on an unannounced observation audits.

The Director of the FSST Commission on Gaming has forwarded copies of the Flandreau Santee Sioux Commission on Gaming "Internal Control and Revenue Reporting Manual" to the South Dakota office of the U.S. Attorney, the South Dakota Commission on Gaming and the National Indian Gaming Commission for their review and comments.

**Report and Attachments:** The report recommends that Tribes consult with the Assistant Secretary for Indian Affairs concerning recommendations that should be made and communicate with Congress on the need to modify provisions of the Indian Gaming Regulatory Act to expedite the process of establishing Class III Indian Gaming operations.

The author of the report states that the process of contract submission, review and approval through appeals and revisions can be as long as 540 days.

**Report and Attachments:** What procedures are employed to assure that the Casino is protected from organized crime and ensure that the Tribe is the primary beneficiary of the gaming operations, and to ensure that games are conducted fairly and honestly?

**Response:** Background investigations on management, key employees, and all licensed employees. Unannounced audits of surveillance and accounting and monitory of reports from the casino's accounting office.

**Report and Attachments:** NIGA should make available a data base of financial data related to the gaming industry for tribal casino's use in evaluating management and equipment leasing contracts.

The report recommends that the Tribe request a data base of financial data related to the gaming industry for their use in evaluating management. This data base would be useful to this Casino, the Tribe and the Commission.

**Response:** The FSST Gaming Commission has acquired a base of data for all tribal casinos, some of which are from other Tribal Casinos but most which are non-Indian. More data from other Tribal Casinos would be very useful.

**Report and Attachments:** Does the management contract require payment of fees to any contractors, which appear to be excessive?

**Response:** Unable to answer. Insufficient information available on current management.

**Report and Attachments:** Should the Act be modified to issue guidelines for establishing management fees and period of performance for management contracts?

**Response:** Yes

**Report and Attachments:** Does this Casino have an approved management contract?

**Response:** No. They had two previous management contracts which were never approved. The Tribe is now entering a third management contract.

**Report and Attachments:** Has the current management agreement been reviewed and approved by the Bureau or the Commission?

**Response:** No

**Report and Attachments:** Are expenses for depreciation included in computing the management fee?

**Response:** No, as the report states; this is not in agreement with generally accepted accounting standards.

**Report and Attachments:** Is the manager paid a salary before the computing the split?

**Response:** No.

**Report and Attachments:** Are operations in full compliance with the Act. Are there any apparent violations of the Act?

**Response:** Operations are in full compliance with the Act and there are no apparent violations of the Act.

**Report and Attachments:** Are Indian tribes the primary beneficiaries? Have the Casino's revenues been reduced due to loss or theft?

**Response:** Yes. A security employee was convicted of theft in a Federal court for a small amount of money he confessed to stealing. Other employees were terminated or resigned because of embezzlement activities.

**Report and Attachments:** Does this Casino have an approved compact?

**Response:** Yes, with the state of South Dakota.

**Report and Attachments:** Have any contractors leased gaming equipment to this Indian Tribe at unreasonably high rates?

**Response:** No -- All gaming equipment is owned outright or on a reasonable purchase agreement.

**Report and Attachments:** Have any gaming devices been purchased for more than the standard purchase price?

**Response:** Not from the current manager. The prior management company did sell used slot machines to the casino for a prize they determined to be reasonable.



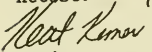
**Report and Attachments:** Is there a minimum return on capital investment provided whether or not the business is profitable?

**Response:** No minimum return is mentioned in the current management agreement. However, the calculation of cash available for distribution does not take into account all capital improvements. Therefore it is possible for the manager to be paid and nothing be available for the Tribe.

If you have any questions, please call the commission office at (605) 997-2270.

Respectfully,

Attest:



Keith Kinner, CPA  
306 Fourth Street, Suite C  
Brookings, SD 57006

800-288-6392



Gordon V. Jones, Sr.  
Executive Director  
FSST Commission on Gaming  
PO Box 351  
Flandreau, SD 57028

605-997-2270



William Schumacher  
Tribal Chairman  
Flandreau Santee  
Sioux Tribe  
PO Box 283  
Flandreau, SD 57028

605-997-3891

Mr. RICHARDSON. Thank you very much.

We will now proceed with Mr. Richard "Tuffy" Lunderman, Gaming Liaison, Rosewood Sioux Tribe. Welcome, Mr. Lunderman.

#### STATEMENT OF RICHARD "TUFFY" LUNDERMAN

Mr. LUNDERMAN. Thank you, Mr. Chairman.

I would like to take this opportunity right now to also thank the Yankton Sioux Tribe for being so hospitable for this hearing, and on behalf of the Rosebud Sioux Tribe, its legislative counsel, administration, and general membership, I extend a warm welcome Lakota Country to Congressman Johnson and Congressman Richardson and your staffs.

It is an honor and a pleasure to provide testimony at this oversight hearing on the economic impact of the Indian Gaming Regulatory Act in South Dakota.

I would also like to announce that Rosebud, on Monday of this week, received verbal approval to begin construction of their casino, and that was due, in large part, to a lot of help with Congressman Johnson's office. So, we extend a thank you to you for that.

The Rosebud Sioux Tribe respectfully requests this Subcommittee to see that the casino management agreement the Rosebud Sioux Tribe negotiated is approved in a most expeditious manner. Every day, the Rosebud Sioux Tribe loses approximately \$20,000, every month about \$600,000, totaling well over \$7 million annually while this contract is under review.

The Rosebud Sioux Tribe asserts the Indian Gaming Regulatory Act is intended to build reservation economies, but in South Dakota, the State's public policy is economic racism.

The Rosebud Sioux Tribe further asserts that the policies and regulations of the National Indian Gaming Commission are inconsistent with the current Federal policy of self-determination.

The compacting process in South Dakota is racist and oppressive and protects the State video lottery system and Deadwood, South Dakota, gaming establishments from competition by tribal casinos and directly, drastically, and illegally restricts tribal economic development.

The elements of economic racism are refusal to recognize the validity, the legitimacy, and inherent sovereign right of tribal governments to retain their jurisdiction to manage their own affairs and to determine their own economic future through their inherent and exclusive right to conduct gaming activities, refusal to recognize and respect the uniqueness and autonomy of each individual tribal government, refusal to recognize and distinguish the conceptual ideologies of Indian gaming versus non-Indian gaming, and refusal to negotiate compacts consistent with Federal legislation and Federal policy.

The elements of economic racism are predicated by the general racist and oppressive attitudes developed from ignorance of Lakota culture, language, history, traditions, customs, principles, spirituality, and needs. This ignorance breeds contempt and wrongful and fallacious assumptions that lay the foundation for the development of new policy in tribal relations.

With all due respect to Congressman Johnson's earlier remarks, compact negotiations in South Dakota have not been an open dia-

logue. The Rosebud Sioux Tribe was more or less coerced into negotiating a gaming compact with terms severely restricting tribal economic development.

Tribal gaming in South Dakota is all about slot machines. Rosebud Sioux Tribe was authorized the fewest number of slot machines of any tribal casino in the United States.

The Rosebud Sioux Tribe has over 18,000 members and is one of the largest tribes in the United States, and I am sure as the Subcommittee and, Chairman, as you are aware, Congress enacted legislation that overturned the Supreme Court *Duro* decision which—that decision stripped tribes of criminal jurisdiction over Indians.

The Congressional legislation reinstated tribes' inherent right to exercise jurisdiction over Indians. The South Dakota legislature supported the *Duro* legislation with a concurrent resolution, but as we sat down at the negotiating table, then the chief negotiator and the Governor's office failed to recognize the constitutionality of that legislation, and as a result, numbers of devices were awarded based on the refusal to acknowledge the constitutionality of that legislation.

The Rosebud Sioux Tribe has an unemployment rate that annually hovers at 85 percent. The 1990 census designated the Rosebud Sioux Reservation as the—and I just found out—as the fourth-poorest area in the United States. I thought it was the 10th. In fact, South Dakota has at least three of the designated 10 poorest areas in the United States, and it is not coincidental that they are reservation areas.

The State of South Dakota submitted four proposals for gaming compacts to Rosebud that explicitly demonstrate the degree of economic racism in compact negotiations. In these proposals, the numbers of devices were based strictly upon the relinquishment of jurisdiction and regulatory authority.

The negotiations conducted were one-sided, heavy-handed, and oppressive. Inferences that the Rosebud Sioux Tribe was a bunch of liars and criminals were made. The State of South Dakota steadfastly refused to acknowledge the constitutionality of the Congressional legislation earlier referred to.

The Indian Gaming Regulatory Act illegally allows states to exercise control of tribal economic development plans and programs. South Dakota protects its own gambling and tourism interests and does not consistently and fairly promote tribal economic development. The compact negotiated with the Rosebud Sioux Tribe severely inhibits our economic independence.

President Clinton's proposed 4-percent tax on tribal gaming to support health care and exempting state lotteries is another form of economic racism. The proposed tax totally ignores the treaties that were negotiated entrusting the health care of Indians to the United States Government. The only consistency is another policy contradictory to enacted Congressional legislation and designed to further oppress Indians.

Reservations are typically the most economically depressed regions in the United States, with a 30.9-percent poverty rate compared to 13.1 percent for all other races nationally. 50.4 percent of Indian families headed by females live in poverty on reservations, compared to 31.1 percent nationally. Only 9.3 percent of Indians

earn a Bachelor's degree, compared to the national average of 20.3 percent.

The President's budget request for Fiscal Year 1995 has proposed drastic cuts to Indian programs, including over a 40-percent reduction to the Indian Health Service. Extreme conditions of hardship already exist, and gaming is successfully addressing these deficiencies in the Federal trust responsibility.

The Rosebud Sioux Tribe respectfully requests of the Subcommittee on Native American Affairs to consider only those amendments to the Indian Gaming Regulatory Act that strengthen tribal self-determination, that promote true economic development through gaming activities, and that adds clear and concise language to the Act concerning submissions and the approval process respective to ordinances and management contracts and ensures the entire process promotes consistency with established Federal law, treaty obligations, and inherent tribal sovereignty.

The Lakota Nation urges the Subcommittee on Native American Affairs to establish a regulatory system over non-Indian gaming interests at least as stringent as those over Indian gaming activities, so those political interests do not tarnish the image and success of Indian gaming.

The Rosebud Sioux Tribe further requests the Subcommittee not to support President Clinton's proposed 4-percent tax on Indian gaming revenue.

On behalf of the Rosebud Sioux Tribe, I thank the Subcommittee for this opportunity and its time. Pila Maya Pelo.

[Prepared statement of Mr. Lunderman follows:]

**STATEMENT OF THE ROSEBUD SIOUX TRIBE**

SUBMITTED TO

U.S. HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

Oversight Hearing on the  
Indian Gaming Regulatory Act, P.L. 100-497:  
The Economic Impact in South Dakota

April 22, 1994

9:00 a.m. CDST

Bingo Hall

Ft. Randall Casino Hotel

Highway 46

Wagner, South Dakota

Submitted By:

Tuffy Lunderman  
RST Gaming Liaison  
Rosebud Sioux Tribe  
P.O. Box 430  
Rosebud, SD 57570

Phone: (605) 747-2381



On behalf of the Rosebud Sioux Tribe, it's Legislative Council, Administration, and general membership, I extend a warm welcome to Lakota Country to Congressman Johnson and Congressman Richardson and your staffs. It is an honor and a pleasure to provide testimony at this oversight hearing on the Economic Impact of the Indian Gaming Regulatory Act in South Dakota.

The Rosebud Sioux Tribe respectfully requests this Subcommittee to see that the Casino Management the Rosebud Sioux Tribe negotiated is approved in a most expeditious manner. Every day, the Rosebud Sioux Tribe loses approximately \$20,000.00, \$600,000.00 monthly, and well in excess of \$7,000,000.00 annually while this contract is under review.

ECONOMIC RACISM! By another name it is referred to as Indian Gaming. The intent and philosophy of the Indian Gaming Regulatory Act in it's most ideal form is certainly admirable and noble but so is the clause in the United States Constitution that says all men are created equal. In reality economic self-sufficiency for Tribal people and Tribal governments never has been and is not today a priority for those special interest groups, lobbyists and Legislators who view the success of Indian gaming as a threat to their Congressional districts; who do not honor and respect the role of the Federal Government in it's trust responsibility with Indian People; and states which are the prime proponents of economic racism.

The Reservations of South Dakota have been coerced into accepting compacts with terms severely restricting Tribal economic development. Tragically and historically, Reservations are the most economically depressed areas in the world despite the United States Congress' obligation to meet the Social, Health, Educational, Physical, Emotional, Dietary, Housing and Clothing needs of the indigenous group referred to as Indians. Treaties were negotiated and promises made and promises broken, except the promise to take the land of the Indians.

The Rosebud Sioux Tribe submits with this testimony a letter from the deceased Governor George S. Mickelson outlining four alternatives during compact negotiations that demonstrate the degree of economic racism and racist attitude of State officials. The alternatives show explicitly that numbers of gaming devices are attached to relinquishment of Tribal jurisdiction and Tribal regulatory authority, in effect Tribal Sovereignty.

The proposals are as follows: First Alternative: This compact, which follows the Flandreau proposal, would call for 180 machines with a 70-machine increment after an appropriate period of time. The regulation and licensing would be split as set out in the Flandreau compact. The civil and criminal jurisdiction would be split as set out in the Flandreau compact.

Second Alternative: This compact would call for 30 machines with an increment of 11 machines after an appropriate period of



time. All regulation and licensing would be done by the tribe. All civil jurisdiction would be in the hands of the tribe. The tribe would have criminal jurisdiction over its own members and over nontribal Indians to the extent permitted by the United States Constitution.

Third Alternative: This compact would call for 60 machines for the tribe with an increment of 23 after an appropriate period of time. All civil jurisdiction would be in the hands of the tribe. Moreover, the tribe would have criminal jurisdiction over its members and over nontribal Indians to the extent permitted by the United States Constitution. Regulation and licensing would be as in the Flandreau proposal.

Fourth Alternative: In this compact the tribe would be allotted 330 machines within an increment of 183 after an appropriate period of time. The state would handle all regulation and licensing. All civil actions would be in state court and the state would assume criminal jurisdiction of all persons.

South Dakota has repeatedly ignored legislation enacted by the Congress of the United States overturning the U.S. Supreme Court decision of *Duro vs. Reina*, Chief of Police, Salt River Department of Public Safety, Salt River Pima-Maricopa Indian Community, ET AL. which held that the sovereignty any Tribe retains as a political entity and a social organization to administer justice over its own affairs does not grant to any Tribe the legal authority to impose criminal jurisdiction against any citizen that is not a member of that Tribe. The jurisdictional void over minor crime created by this decision was cause for alarm throughout Indian country. This void allowed many non-member Tribal individuals to go unprosecuted for violating Tribal law.

The U.S. Supreme Court did suggest if their decision created a jurisdictional void it was the responsibility of the U.S. Congress to enact appropriate Legislation to address that issue. The Congress of the United States enacted PL-102-137 on October 28, 1991 during the 102nd Congress making permanent the legislative reinstatement of the power of Tribes to exercise criminal jurisdiction over Indians. The State of South Dakota, having one of the largest Tribal populations in the United States, supported the H.R. 972 with its own concurrent resolution passed through the state legislature.

In yet another demonstration of oppressive racist tactics the State refused to recognize the constitutionality of PL 102-137 in its compact negotiations with the Rosebud Sioux Tribe. The Rosebud Sioux Tribes refusal to relinquish its criminal jurisdiction over non-member Indians resulted in the State awarding the Tribal government 120 gaming devices as compared to 250 devices to those Tribal governments who were willing to relinquish criminal jurisdiction to the State.

Rosebud Sioux Tribe asserts that the State intended to

restrict the Tribal economic development and to protect the interests of Deadwood, S.D. gaming with such negotiation tactics. The State did not negotiate fairly and did not want the added financial burden of prosecution as evidenced by the fact of an incident at a Tribal casino where criminal jurisdiction had been relinquished and violators of the regulatory system were referred to the local State's Attorney office and prosecution was declined by that office.

Never was the intent of the Indian Gaming Regulatory Act (IGRA), it's authors, or the U.S. Congress to have Tribal economic development plans determined in state legislatures and/or by administrative policy of the governor's office. The needs of Tribal government and those of its Tribal members can only be determined by tribal people.

Until the dominant society can objectively recognize the fact that assimilation is not an effective policy these oppressive policies and practices will continue to oppress this group of human beings who happen to be Native American.

The Rosebud Sioux Tribe has educational programs from Head Start through a Masters Degree in post secondary education. The development, growth, and continued exceptional success of Sinte Gleska University at Rosebud, South Dakota, is testament to the foresight and management capabilities of the Rosebud Sioux Tribe. The leadership this University has provided to the other Tribal Nations is directly related to the vast talent of available human resources. The myth that we cannot manage our own Tribal affairs has long been dispelled. Despite the impoverished conditions that exist because of ineffectual policies, programs, and appropriations the Sicangu people of the Rosebud Indian Nation proceed to develop themselves to be capable and productive people.

IGRA is contradictory in it's intent. It's intent is to promote Tribal economic development, self-sufficiency, and strong Tribal government. WHAT state has cooperatively assisted Tribal governments to work toward self-sufficiency? The reason IGRA was enacted was because states saw the threat that Indian gaming posed to their economic development plans. In effect IGRA gave states control of Tribe's economic destiny. Certainly in South Dakota the state practices economic racism by subjecting Tribal governments to accept terms and conditions that drastically restrict their economic development capabilities while fully protecting it's constituency in Deadwood, South Dakota. even though statistics prove wherever Indian Gaming occurs the surrounding non-Indian communities and County governments greatly benefit, the state still practices economic racism. IGRA does not in fact promote true tribal economic development, It only promotes it to the degree the State determines.

South Dakota fails to recognize Tribal governments as legitimate governmental entities by initially treating each Tribe as one individual when discussing numbers of gaming devices. To

fairly and effectively negotiate with Tribal governments the State must fully understand and comprehend the philosophy of non-Indian gaming, which is pure capitalism, versus Indian gaming, which is more socialistic. Gaming in Deadwood, South Dakota, Las Vegas, Atlantic City, and other places where it is purely capitalistic benefits one individual whether it be a single proprietorship or a Corporate individual. The government will benefit primarily through the taxes it collects but the profits go to one individual or a select group of people. Tribal gaming is intended to benefit the governmental structure and profits go to that end.

In South Dakota, Deadwood is a community of 2,000 residents and has in excess of 2,000 gaming devices. The Rosebud Sioux Reservation has approximately 15,000 Tribal members, is designated as one of the poorest areas in the United States, and was allotted 120 gaming devices, the least of any gaming facility in the United States. Not only is that a startling statistic, it is alarming, racist, asinine, and oppressive.

There are over 7,000 Video Lottery Terminals (VLT's) throughout South Dakota. There are more VLT's located within the former boundaries of the Rosebud Sioux Reservation than gaming devices the Rosebud Sioux Tribe has been authorized for its casino. The State of South Dakota receives approximately \$50 million annually as its share while the approximately eight major owner/operators receive approximately 64% of net revenues which equate to over \$100 million.

The Rosebud Sioux Tribe Casino project will provide little competition to the state's gaming interests in Deadwood, S.D. The location of the facility which is on the Nebraska-Sicangu Nation border will focus on residents from Nebraska primarily. The community of Valentine, Nebraska is 9 miles south of the Casino site and does a tremendous tourism promotion effort. Several hundred thousand tourists make Valentine and the surrounding area a destination point annually. U.S. highway intersects the Sicangu Nation with a daily traffic count of approximately 1000 vehicles. U.S. 83 is the only major highway that connects Canada and Mexico. The demographics suggest a market potential to support a facility with at least as many gaming devices as allowed in other Tribal casinos in South Dakota where relinquishment of criminal jurisdiction was rewarded with 250 devices. The net effect of the racist tactics of South Dakota is restricting the economic development capabilities of the Rosebud Reservation by more than one half.

One of the most racist concepts ever developed was centered on the misconception Columbus found his way to India and as a result the Natives of this land became known as Indians. This racist label fails to recognize the cultural differences and the cultural uniqueness of the various tribes. The State of south Dakota negotiated the first gaming compact with the Flandreau Sioux Reservation and has consistently applied those items as the basis for negotiations with other Reservations in South Dakota. The

Governor's Chief negotiator, being ignorant of Lakota culture, language, history, traditions, customs, values, beliefs, and Tribal needs has illegally asserted the state's attempt at consistency and fairness in dealing with all reservations in South Dakota. Whose concept and interpretation of consistency and fairness is being applied? The Sioux Nation asserts IGRA recognizes the uniqueness of each Reservation and those cultural, historical, customary, spiritual, and governmental differences that are unique to each Reservation. The Sioux Nation further asserts the concept of fairness when applied to the compacting process includes the recognition of the aforementioned differences that are unique to each Reservation and therefore each compact negotiation session with an Indian Nation should be unique to the needs, demographics, governmental infrastructure, and market pressures of each individual Reservation.

South Dakota's Chief gaming negotiator again demonstrates the ignorance and contradictory process applied to these negotiations by alleging that each Reservation wants a better deal than the previous. Each Tribe is rightfully asserting its own uniqueness, autonomy, and governmental authority to negotiate individually and on it's own behalf. The compacting process in south Dakota is an oppressive process that protects big business interests and political interests in Deadwood, South Dakota, and totally ignores the third world poverty conditions of the first Americans. These inhumane conditions are an extension of the "Conquering" methods and tactics that include the physical, mental, and emotional abuse in boarding and parochial schools used to brainwash and assimilate the Indian Nations. The Governor's Chief negotiator illegally assumes and misrepresents that the State of South Dakota has been delegated the delicate responsibility of balancing all of the various gaming interests in South Dakota. Again, this economically racist attitude surfaces implying Reservations cannot compete in a free enterprise system and they must have the state manage their affairs. U.S. Congress did not delegate the economic interests of the Reservations to the Governor of South Dakota. The Rosebud Sioux Tribe asserts no one delegated that responsibility to any branch of the South Dakota State government. The State of South Dakota unconstitutionally, and unethically usurped that authority thus the economic interests of Deadwood, South Dakota and South Dakota are protected at the expense of Tribal Economic Development.

The relationship between Reservations, Federal, and State governments must develop to achieve interdependence rather than continued oppressive dominance. Recognition of similarities in culture, customs, beliefs, and spirituality will develop support and recognition of differences and uniqueness will build respect. The States and the federal government cannot talk their way out of the way they have behaved with Tribal governments. Who is responsible for building trust into a relationship that has been predicated by dominance, oppression, and the many faces of racism? South Dakota is a gaming state and Reservations also have a right to conduct gaming activities. Both are legitimate, bonafide governmental entities. In the mid 1960's the citizenry of South



Dakota were afforded the opportunity to invoke state jurisdiction over the nine Reservations via a referendum vote. The citizenry voted unequivocally not to become a 280 state. That referendum should be the guiding light to the branches of state government in it's relationship with Reservations. IGRA may be unconstitutional because the State decided against state jurisdiction through it's citizenry and IGRA allows for states to meddle in Reservation economic development. IGRA may be appropriate only in those states who opted to become 280 states.

Furthermore, IGRA does not work to the best interest of Tribal economies. In over a year of functioning the National Indian Gaming Commission (NIGC) has approved only two management agreements. The Rosebud Sioux Tribe Management Agreement has been under review for nearly eleven months and as of April 14, 1994 there is no indication that the contract will be approved in the near future. There is considerable confusion over what a complete submission is. The liberal interpretation NIGC gave to Rosebud is illogical and detrimental to the economic development efforts of Tribes through development, construction, and management of casino projects. Theoretically, NIGC is a friend of the Tribes, however, in reality NIGC is just another bureaucracy with more than the usual red tape. The 270 day approval process is another significant issue. As the regulations were written and are interpreted the process is never ending. Every time issues requiring amendments to the contract arise the clock starts ticking all over, so there is no recourse to the Tribes except to stay in the system unendingly or become outlaws and circumvent the rules to become an active player. The process and options are detrimental and discouraging to the efforts of Tribal economic development plans.

The Management firm, BBC Entertainment, Inc., that will manage the Rosebud casino project is comprised of enrolled Tribal members. This is a unique partnership in Indian Gaming and will allay the usual fears of the management firm "ripping-off" the Tribe. The principles of BBC have more than their money at stake. They risk personal integrity, homes, subjection of their families future on the Reservation to ridicule, mistrust, and perhaps exclusion from their home Reservation.

Through this agreement the Tribe does not subject any Tribal assets, property, or finances that are outside the Casino project. BBC will hire a General Manager that is a descendent of Tribal enrollees at Rosebud and he has over 30 years of experience in gaming in Reno and Las Vegas, Nevada and Indian Gaming. The Rosebud Sioux Tribe has a human resource pool of 7500 people between the ages of 18 years and 45 years old with an estimated 85% unemployment rate this translates to over 6300 of these Tribal members immediately available for training and employment. Local records of welfare agencies indicate at least 50% of these as clients. The immediate impact of a Casino project can easily be translated into jobs, businesses, training, professional development, etc.

President Clinton's proposed 4% tax on Tribal gaming to support Health Care Reform and exempting state lotteries from this tax is another form of Economic Racism. The proposed tax totally ignores the Treaties that were negotiated, entrusting the Health Care of Indians to the United States Government. The only consistency is another policy contradictory to enacted Congressional Legislation and designed to further oppress Indians.

Reservations are typically the most economically depressed regions in the United States with a 30.9% poverty rate compared to 13.1% for all other races nationally. 50.4% of Indian families headed by females live in poverty on Reservations compared to 31.1% nationally. Only 9.3% of Indians earn a bachelor's degree compared to the national average of 20.3%. The President's budget request for F '95 has proposed drastic cuts to Indian programs including over 40% reduction to the Indian Health Service. Extreme conditions of hardship already exist and gaming is successfully addressing these deficiencies in the federal trust responsibility.

Whether coincidental or not as the success of Indian gaming spreads federal cuts to programs directly impacting Reservations increase. Especially in the area of health. The largest cuts in the Department of health and Human Services will be in the Indian Health Service budget. Reservations will have to make up these deficits through their gaming profits. The time is critical for Reservations as who knows the time frame of the cycle of this new buffalo? Real self-determination is possible for Reservations through diversification of economic development projects which bolster the local economy.

The positive economic impact of Indian gaming is well documented in several states. The myths and fears of organized crime, addiction, destruction of family values. Indians do not pay taxes, no regulatory mechanisms, loss of jobs, loss of spirituality, etc. have all been "TRUMPED".

The Rosebud Sioux Tribe respectfully requests of the Subcommittee on Native American Affairs to consider only those amendments to the Indian Gaming Regulatory Act that strengthens Tribal Self-Determination, promotes true economic development through gaming activities, adds clear and concise language to the Act concerning submissions and the approval process respective to ordinances and management contracts, and ensures the entire process promotes consistency with established federal law, treaty obligations, and inherent Tribal Sovereignty.

The Rosebud Sioux Tribe further requests the Subcommittee not support President Clinton's proposed 4% tax on Indian Gaming revenue.

On behalf of the Rosebud Sioux Tribe, I thank the Subcommittee for this opportunity and it's time. Pila Maya Pelo.





## STATE OF SOUTH DAKOTA

GEORGE S. MICKELSON  
GOVERNOR

EXECUTIVE  
STATE OF  
SOUTH DAKOTA  
PIERRE, SOUTH DAKOTA  
57501  
(605) 773-1000

June 28, 1991

Mr. Ralph Moran, President  
Rosebud Sioux Tribe  
P.O. Box 430  
Rosebud, SD 57570-0430

RE: Gaming Compact

Dear President Moran:

In response to your recent request, I have formulated three new alternative proposals for a gaming compact between the Rosebud Sioux Tribe and the state. Together with the proposal which follows the Flandreau compact, we now can present you with four different proposals.

The proposals are as follows:

**First Alternative:** This compact, which follows the Flandreau proposal, would call for 180 machines with a 70-machine increment after an appropriate period of time. The regulation and licensing would be split as set out in the Flandreau compact. The civil and criminal jurisdiction would be split as set out in the Flandreau compact.

**Second Alternative:** This compact would call for 30 machines with an increment of 11 machines after an appropriate period of time. All regulation and licensing would be done by the tribe. All civil jurisdiction would be in the hands of the tribe. The tribe would have criminal jurisdiction over its own members and over nontribal Indians to the extent permitted by the United States Constitution.

**Third Alternative:** This compact would call for 60 machines for the tribe with an increment of 23 after an appropriate period of time. All civil jurisdiction would be in the hands of the tribe. Moreover, the tribe would have criminal jurisdiction over its members and over nontribal Indians to the extent permitted by the United States Constitution. Regulation and licensing would be as in the Flandreau proposal.

Mr. Ralph Moran  
June 28, 1991  
Page 2

Fourth Alternative: In this compact the tribe would be allotted 330 machines within an increment of 183 after an appropriate period of time. The state would handle all regulation and licensing. All civil actions would be in state court and the state would assume criminal jurisdiction of all persons.

I should add, Ralph, that these proposals have been arrived at only after careful examination of what we perceive to be our interests and after consideration of the present gaming situation with regard to tribes within the state. As you know, we have reached compacts with three other tribes, and a fourth compact is quite close to signing.

I sincerely hope one of these proposals will meet with your satisfaction and Rosebud may soon have a casino up and running if that is its desire.

Please do not hesitate to contact my appointed negotiator, Mr. Grant Gormley, if you have further questions about these proposals.

Finally, Ralph, after you have an opportunity to review these proposals, please feel free to contact me directly with your thoughts on them.

Very truly yours,

GEORGE S. MICKELSON

GSM:ggj

Mr. RICHARDSON. Let me mention that, before proceeding with the next witness, I want to state that my hope is that, sometime this year, I will get a chance to visit all of your reservations. This trip was put together on very short notice. Some of you received late notice. That is because the Chairman, myself, we scheduled this on very short notice, and we apologize for that, but I—and I appreciate Mr. Lunderman's statement.

I think that anytime any of you—and hopefully, in the questions, you can give us direct recommendations. That is what we need to hear, because we have tried to be very engaged on a number of issues. We have passed a lot of legislation, but we need to know, very candidly, your thoughts on some of the issues that we are exploring today, what we do with the legislation, the IGRA. Possibly, there will be some movement in the Senate, and we will be anxious to hear your thoughts on it.

So, with that, let me just—let us proceed with the next witness. I do not see Mr. Tapio here, so we will proceed with Mr. Mark Van Norman, who is a Tribal Attorney, Cheyenne River Sioux Tribe. Mr. Van Norman, welcome.

#### STATEMENT OF MARK VAN NORMAN

Mr. VAN NORMAN. Thank you, Mr. Chairman and Congressman Johnson and tribal leaders. I appreciate the opportunity to be here to testify on behalf of my tribe. I will try and summarize.

I have in my testimony that Sioux Indians are the poorest people in the United States, and from our perspective, we think that is based on the United States' dealings with the Sioux Nation, because we had plenty of resources back in 1868.

The census figures, which I have summarized on that chart over there, show that 7 of the poorest 32 counties in the country are on our Sioux reservations. As you see, Shannon is the poorest. That is at Oglala. Todd is the fourth-poorest. That is Rosebud. Buffalo, I think, is among the top 10 there. I cannot see the number. Sioux County in North Dakota is on Standing Rock, and it just overlaps the South Dakota border.

On our reservation, Xebec County is the 22nd-poorest. Coorson County is the 26th-poorest. That is the other Standing Rock county that lies in South Dakota. Dewey County is the 32nd-poorest.

So, we have 10 percent of the bottom poorest in the country on our reservations, and I think you would note that South Dakota has no off-reservation counties that are among those poor counties.

I think you could also note the poverty line is up there at \$14,700 for a family of four, and what we are talking there is from \$3,000 to \$6,000 per capita income. So, things are bad.

Unemployment is 85 percent on the Cheyenne River Reservation, according to the BIA labor statistics, and this poverty creates a cycle of despair and depression, leads to health problems, alcoholism, suicide.

Nevertheless, the State of South Dakota, through Governor Miller's office, has anticipated that it will be one of the trial states on welfare reform, and this concerns us mightily, because frankly, if you have got 85-percent unemployment, it is going to be very difficult to get people off welfare in two years.

Housing is also a problem. I did not have a chance to get, really, statistics together. So, I just went down the street from where I live.

That first picture over there, sort of with the—perhaps you could call it a two-bedroom house. A family of 14 lives in that house.

That next picture, that green house, with the trash bags for a roof—a single mother with four young children live in that house. That is just a couple of houses down from me. We have sub-zero temperatures in the winter, going to 52 below, actual temperature, and she had to live there throughout the winter.

That other house you see—well, that burnt down, but somebody felt that, due to our scarcity of housing, that they had to rebuild that to try and live in that house.

So, you see, we really need gaming to build up our infrastructure on the reservation, and we need it for seed capital. We are a large tribe with 12,000 members. We are never going to get a chance to make a per capita distribution or anything. We need it for essential government services, and I think that goes back to Mr. Lunderman's point.

The 4-percent tax should not be—proposed tax on commercial gaming—cannot be applied to tribal gaming, because tribal gaming is government gaming, meant to redress some of these terrible problems.

Mortality is pretty bad on the reservation. I have summarized it there. I will just give you the highlights.

Alcoholism deaths, 688 percent above the national average on a reservation.

Motor vehicle accidents, 223 percent of the national average. Of course, that is highly related to alcohol abuse.

Suicides, 426 percent above the national average.

Those percents are kind of dry sometimes, even though they are large. So, I put in three obituaries that occurred in about the last month of so.

Garland Little Star, he is a man that used come by my office every day. Unfortunately, Garland went out one night in February. It had warmed up, and then it just turned real cold that night. He fell asleep outside and died of exposure.

Dorrey Brown Thunder lived down in Cherry Creek, never got a chance to finish high school, because he committed suicide this month, at the age of 17.

Lucille Chasing Hawk, at the age of 50—she was a very well-respected member of our community, but based on her diabetes, she just passed away.

These deaths are premature, and those are the deaths that we see all the time. In fact, we know, on the Sioux reservations, if you are born a Sioux Indian, you have a much shorter life expectancy than the rest of Americans.

That is what we are trying to change on our reservations. We count this as the seventh generation since Wounded Knee. So, we are looking to heal the Sacred Circle of the Lakota Nation—I should say of the Sioux Nation. We have our Dakota people here.

So, at Cheyenne River, we have begun a war on alcohol abuse to try and redress some of these problems. That is summarized in an article over there from USA Today.



We have tried to rebuild our buffalo herds.

We want to use Indian gaming as a means to help this renewal, and we know that Congress expected that we would have that opportunity.

I guess I would have to say, having participated in several years of negotiations to try and get a reasonable compact, that it really was economic racism. What we got was—at our first meeting—here is the Flandreau compact, why don't you go back and read that over? Our proposal was completely ignored, even though we had spent, you know, some considerable time putting it together.

We were told that, if we wanted to get more than 250 slot machines, that, well, really, our numbers and our need for economic development did not have any bearing. We would have to give up jurisdiction *quid pro quo*, and really, there is a battle over jurisdiction in South Dakota.

South Dakota—the State Government wants to extend as much jurisdiction as possible over the reservations, leaving us no sphere for tribal sovereignty.

You may know, for example, that three times the Supreme Court has ruled states cannot tax Indians on their motor vehicles. Well, we went in and we tried to negotiate that issue, and they said, well, South Dakota is different than Oklahoma or Montana or Washington; we think we can tax Indian motor vehicles.

Well, we thought the slot machine was really economic racism, but our location issue was even worse. We are in a remote area. We are 180 miles from Rapid City, 180 miles from Bismarck, 90 miles from Pierre, and we had a couple of off-reservation locations which were really far more viable than anything on the reservation.

One outside Fort Pierre was called the "Slow Eagle" parcel, because that was an allotment made to a tribal member in 1889. Well, that is listed in our constitution as part of our territory, but the State said no dice, we are not negotiating for that.

We had a location at Pluma, South Dakota, about two miles down the road from Deadwood. We were going open up about a \$2 million casino. Well, the State said no, that would be the proliferation of gaming in South Dakota, but the next year, when Kevin Costner came in with a \$65 million casino project, that was economic development. That is what we see as economic racism.

We tried to work this thing out. We went to the State legislature when we could not work with the administration. We introduced some different legislation. Scott Heidepreim, who is a Republican State Senator, saw that this was a reasonable effort, and he sponsored one bill, and actually, we decided to push the Cheyenne River Sioux Tribe's bill instead. We got it through the Senate unanimously, but then the Governor's office came and lobbied the House and killed it in the House.

So, we were left with nothing except the litigation. We went through the good faith litigation process, and I can tell you that a Federal District Court Judge is very reluctant to say that the Governor in his State is acting in bad faith, because the term "bad faith" has connotations to it.

So, it is very difficult to win that, and I guess the District Court Judge felt that we were not at the final last straw, so he denied us relief.

We took that up to the Eight Circuit Court of Appeals, and we got the first decision out of the Court of Appeals to determine that the IGRA is constitutional, but I will tell you again that gaming is not a popular issue among those Court of Appeals judges, and so, we got very short shrift, and I think any attorney looking at the opinion would say that, unfortunately, the Cheyenne River Sioux case is totally at odds with the Cavazon decision and the IGRA. Well, so we could not get any relief.

I guess what I would say concretely about the Act is it does not make sense to have litigation before mediation. The mediation should come first. I think you could drop out the litigation, and after 180 days, if things do not work out, have a mediation period perhaps. If the mediation does not work out, let the Secretary of Interior decide. You know, you vest the Secretary of Interior with authority. You know, he has a broad national outlook.

The same kind of policy that was used in South Dakota on the 250 machines regardless of size was used in Arizona. Down there, what happened was they said no, you have to scale it according to the tribes. So, now some of the tribes down there have 1,500 machines based on that, and I think that is just a recognition that they need more economic development.

On the economic development on the Duro-type jurisdiction, were all Sioux tribes here so that term non-member Indian does not even really apply to us, and moreover, I have attached a concurrent resolution from the State legislature which applauds Congress for passing the Duro-fix legislation.

Well, you would think that would be State public policy. Instead, what we see is actually lower-level attorneys in the Attorney General's office come up with these wildcat policies for State Indian policy, and we are left stuck with that, because the Attorney General and the Governor defer to that.

Well, we think, actually, that this type of wildcatting in the State Attorney General's office indicates that maybe the State should not be in the process at all.

[Prepared statement of Mr. Van Norman and attachments follow:]



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Robert Chasing Hawk  
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DISTRICT 6  
Cahm "Red" Traverse  
Louis Dubray

April 22, 1994

TESTIMONY OF MARK C. VAN NORMAN, TRIBAL ATTORNEY  
REPRESENTING THE CHEYENNE RIVER SIOUX TRIBE

BEFORE THE U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES  
SUB-COMMITTEE ON NATIVE AMERICAN AFFAIRS

OVERSIGHT HEARING ON THE INDIAN GAMING  
REGULATORY ACT, P.L. 100-497  
ECONOMIC IMPACT IN SOUTH DAKOTA

FORT RANDALL, SOUTH DAKOTA

The blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka—the Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth

Good Morning. My name is Mark Van Norman, and today I am here to represent my tribe, the Cheyenne River Sioux Tribe. Mr. Chairman, Congressman Johnson, Members of the Committee, thank you for coming to Sioux country to listen to the problems we have faced in trying to use the INDIAN GAMING REGULATORY ACT to promote tribal economic development.

# I. SIOUX INDIANS ARE THE POOREST PEOPLE IN THE UNITED STATES

Historically, the Dakota/Nakota/Lakota Oyate or Sioux Nation ruled over a vast territory, including millions of acres throughout Iowa, Minnesota, North and South Dakota, Nebraska, Wyoming, Montana, and Canada. Our people enjoyed a life in harmony with nature under a free and democratic society. When the United States came to take our lands, our warriors fought to protect their wives and children, our country, and our culture, and in the Powder River War of 1866-1867, THE SIOUX NATION WON. See United States v. Sioux Nation, 448 U.S. 371 (1980) (outlining history).

In the Treaty with the Sioux, 1868, the United States pledged its "honor" to keep the peace, and guaranteed western South Dakota as the "permanent home" of the Lakota or Teton Sioux Nation. In this way, the Sioux Nation reserved our original hunting grounds and the native wealth of the Black Hills for the future, or as we say, the "Seventh Generation."

A short eight years later, the United States violated the Treaty by sending out General Custer to "whip" the Sioux off of our treaty-protected and back to reservation agencies, to forcefully exchange a free, self-sustaining way of life for starvation and government handouts. Though General Custer failed in his illegal attack upon our people, the United States continued its policy by "taking" 7 Million acres (including the Black Hills) in 1877 in violation of National Honor, Treaty, and the Constitution. In 1889, the Great Sioux Reservation was again diminished, dividing our tribes on separate reservations -- and taking 11 million acres more. The "division" was sealed by the Wounded Knee Massacre in 1890.

The history of the United States dealings with the Sioux Nation has reduced us to poverty, and left us the poorest Americans of all.

CENSUS FIGURES: The Census Bureau reports that 7 of the poorest 32 counties in the United States are found on our Sioux reservations. Average per capita income hovering around \$6,000 leaves the Cheyenne River Sioux well below the poverty line (\$14,764 for a family of four). That means our children often must live with poor, inadequate clothing in our sub-zero winters, and go to bed at night hungry or malnourished.

The Bureau of Indian Affairs labor statistics show unemployment on the Cheyenne River Sioux Reservation of 85%! Unemployment of 85%!

This poverty creates a cycle of despair and depression, which leads to health problems, alcoholism and suicide.

(Nevertheless, though the State Administration has sought to keep Indian economic development through gaming to a minimum, Governor Miller proposes South Dakota as a trial state for welfare reform! The Cheyenne River Sioux Tribe sincerely hopes that Congress will ensure that when welfare reform is passed, Sioux Indians in areas of unemployment exceeding the national level of unemployment by 2, 4, and up to 10 times, will not be thrown "out in the cold" with no money, no food, and no opportunity for employment.)

**HOUSING:** Housing is terribly inadequate on the Cheyenne River Reservation. As they say, a picture is worth 1,000 words, so we submit some pictures of our problem housing. 14 people live in the first house which is pictured and a single mom with four children live in the second house pictured -- and they lived there throughout the sub-zero winter<sup>1</sup> with only garbage sacks for a roof!

It only took ten minutes driving around Eagle Butte to take a whole roll of 36 pictures of houses like these. The same type of houses are found throughout the 18 communities on our reservation.

**MORTALITY:** The Cheyenne River Sioux, and Sioux Indians throughout South Dakota, suffer health problems at rates far above the National Average. The Indian Health Service reports:

1. All Causes. The Cheyenne River Mortality Rate for all causes is 77% above the National Average.
2. Alcoholism. The Cheyenne River Mortality Rate for alcoholism is 688% above the National Average.
3. Cerebrovascular. The Cheyenne River Mortality Rate for cerebrovascular disease is 82% above the National Average.
4. Pulmonary. The Cheyenne River Mortality Rate for chronic obstructive pulmonary disease is 148% above the National Average.
5. Diabetes. The Cheyenne River Mortality Rate for diabetes is 84% above the National Average.

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<sup>1</sup> One night the temperature went down to 52 degrees below zero -- actual temperature. Taking wind chill into account, it was often 80 degrees or more below zero last winter on our Reservation.

6. Motor Vehicle Accidents. The Cheyenne River Mortality Rate for motor vehicle accidents is 223% above the National Average.

7. Homicide. The Cheyenne River Mortality Rate for homicide is 203% above the National Average.

8. Suicide. The Cheyenne River Mortality Rate for suicide is 426% above the National Average.

(Source of IHS Statistics: Aberdeen Area Tribal Chairmen's Health Board Meeting Jan. 29-30, 1992, Service Unit Ratings of Mortality Rates.) Unfortunately, due to inadequate funding, our IHS hospital and clinical staff is not able to handle many of Reservation health care problems, and our people are frequently transported over 150 miles -- at the risk of life and limb in emergency situations -- to undergo relatively simple medical procedures.

REAL LIFE, AND DEATH, ON THE RESERVATION: IHS statistics provide only a dry recital of the terrible health problems that exist on our Sioux Reservations in South Dakota, so we include obituaries recording some of the deaths that occurred recently.

In high school, Garland Little Star was a star athlete, but he dropped out of school and found no job opportunities for work on our Reservation. He developed a lifestyle of chronic alcoholism, and he suffered mental and physical infirmities as a result of his condition. Garland was a frequent visitor at my office but I never knew he was only 39 -- he looked to be in his late 50s. One night in February when the temperature fell to -40 degrees, Garland fell asleep outside. He never woke up. Poverty was the root cause of his death by exposure.

Dorrey Dietrick Brown Thunder lived in one of our more remote communities, Cherry Creek. Dorrey never got a chance to finish his high school degree because on April 3, 1994 he committed suicide at the age of 17. (We have a serious problem with teenage suicide at Cheyenne River and the other Sioux Reservations in South Dakota. Last year, several young men created suicides, and these suicides appear to be a result of a feeling of hopelessness about the future, about life, about the impossibility of employment on the Reservation.)

Lucille Chasing Hawk was a very well respected, venerated member of the community, and at the age of 50, many years before the end of her natural life expectancy, she succumbed to diabetes related conditions. At Cheyenne River, diabetes reaches epidemic proportions, and our IHS health care people find that diabetes is often related to the poor diet, which results from poverty.

These deaths are much like the deaths that we see at any time of the year. Youths, young adults, or the middle-aged dying before

their time. The tragic reality is that based on the poverty on the Sioux Reservations, if you are born a Sioux Indian, you have a much shorter life expectancy than other Americans.

That is what we are fighting to change. Among our people, we count the present generation as the "Seventh Generation" since the Wounded Knee Massacre, and we look to this generation as time for the renewal of the Sacred Circle of the Sioux Nation. At Cheyenne River, we have begun a War on Alcohol Abuse (described in April 8, 1992, U.S.A. Today), and we are rebuilding our tribal buffalo herd. We must find a way to cut our 85% unemployment rate through tribal economic development. Indian gaming is a major source of economic development for our sister Sioux tribes and at Cheyenne River, we believe Congress meant to permit gaming as a way to help overcome the devastating poverty on our Reservation.

## II. THE INDIAN GAMING REGULATORY ACT WAS INTENDED TO PROVIDE A MEANS OF ECONOMIC DEVELOPMENT FOR INDIAN TRIBES

Indian nations were sovereign, self-governing communities prior to the arrival of Europeans in America, so Indian tribes are said to "pre-date" the Constitution. Indeed, the Supreme Court has held that the Constitution itself recognizes Indian sovereignty by affirming, as among the "supreme Law of the Land," treaties entered between the United States and sovereign Indian nations prior to the ratification of the Constitution. U.S. CONST., Art. VI, Sec. 2.

Towards the end of the Nineteenth Century, the United States "forgot" that it had established a protectorate relationship with the Indian tribes and "forgot" its obligations to Indian tribes as sovereign governments, seeking instead to impose American hegemony in Indian country. Yet, in the past several decades, Congress and the American people have remembered that rights of Indian people to self-government and self-determination are inalienable human rights which the United States is bound by National Honor to protect.

As Americans and as Indian people, we should take a moment to remember former President Richard Nixon, pray for his health, and thank him for his support of tribal self-government. As President, Mr. Nixon made clear that the guiding principle of federal Indian law was a new policy of "self-determination" for Indian tribes:

a new direction in which we will have the cooperation of both Democrats and Republicans, one in which there will be more of an attitude of cooperation than paternalism, one of self-determination rather than termination, one of mutual respect.

Remarks of President Nixon, December 15, 1970, on signing the Act returning Blue Lake to Taos Pueblo; Public Papers of the Presidents of the United States: Richard Nixon, 1970, pp. 1131-32. Presidents Ford, Carter, Reagan, Bush, and Clinton have reaffirmed the policy



of self-determination, with President Reagan adding that:

It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government.

19 Weekly Comp. Pres. Doc. (Jan. 24, 1983). Indian nations and tribes have taken this message to heart, striving to renew tribal government and economies through tribal enterprises, including Indian gaming.

In California v. Cabazon Band of Mission, 480 U.S. 202 (1987), the Supreme Court stated: "the congressional goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development ... are important federal interests," which were reaffirmed by the President and Department of Interior.

In enacting the Indian Gaming Regulatory Act, Congress has made clear that these are indeed important federal interests. The IGRA's stated purposes are:

- 1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;
- 2) ... to protect such gaming as a means of generating tribal revenue.

25 U.S.C. § 2702. Accordingly, when the Cheyenne River Sioux Tribe requested to negotiate a class III tribal-state gaming compact with the State of South Dakota, we expected to deal with the state as an "equal sovereign" in our effort to develop a tribal economy through gaming. That's not what happened.

### III. THE STATE OF SOUTH DAKOTA FRUSTRATED THE PURPOSE OF THE IGRA

**A. Slot Machine Numbers:** Under state law, an individual in Deadwood, South Dakota is permitted to operate 90 slot machines and individuals may operate an unlimited number of video lottery, that is electronic poker, bingo, keno, etc., provided that no "building" contains more than 10 video lottery machines. The result is well over 2,500 slot machines in Deadwood, and over 7,000 video lottery machines in bars throughout the State.

Nevertheless, when we began to negotiate with the State of South Dakota, the Cheyenne River Sioux Tribe was handed a copy of the Flandreau Sioux Tribe's gaming compact, with a suggestion to read it. The State had limited the Flandreau Sioux Tribe to 180 devices as a compromise based on what two individuals in Deadwood



could own,<sup>2</sup> plus 70 more slot machines if Flandreau's other slot machines averaged more than \$68.00 per machine per day (a figure far higher than the average play in Deadwood). Clearly, the State Administration was trying to minimize Flandreau's gaming.

Yet, perhaps that was adequate for the economic development of the Flandreau Sioux Tribe with its 500 members. However, the State flatly refused to take the population of the Cheyenne River Sioux Tribe into account in negotiating machine numbers. To the State, it was irrelevant that we have 12,000 members, 85% unemployment and a terrible lack of community infrastructure.

The State refused to budge on machine numbers unless the Cheyenne River Sioux Tribe conceded more jurisdiction than the Flandreau Sioux Tribe had conceded. The State had no objective rationale for its negotiation positions, but simply stated that if they "gave something up" they had to get something more in return. That was not a reasonable way to formulate regulatory processes for tribal gaming, it was just a way to minimize Indian gaming.

**B. Locations:** The IGRA provides that an Indian tribe with jurisdiction over Indian lands where gaming is "to be conducted" may request compact negotiations for the regulation of such class III gaming. The Cheyenne River Sioux Reservation is located far from any population center: Pierre is 60 miles, Rapid City 150 miles, and Bismarck is 150 miles. The Cheyenne River Sioux Tribe, however, has two valuable "off-reservation" trust land locations: one four miles outside of Ft. Pierre, SD and one at Pluma, SD two miles from Deadwood.

The Tribe's Ft. Pierre location is called the "Slow Eagle" parcel because it was allotted to a tribal member named Slow Eagle under the 1889 Act which divided the Great Sioux Reservation, and that Act specifically recognizes that tribal members were eligible for allotment on trust land anywhere within the then Great Sioux Reservation -- regardless of whether or not it was within the six smaller reservations created by the Act. Our Cheyenne River Sioux Tribe Constitution recognizes the land as part of tribal territory. Yet, the State flatly refused to negotiate for gaming on the site.

The Tribe's Pluma location had been acquired by tribal members in trust in the 1930s, and was within the IGRA definition of Indian lands. Yet, the State told us that it could not allow us to build a \$2 million casino there because it would represent an expansion of gambling in violation of state public policy! We found out that the State's position was a mere cover for its ECONOMIC RACISM when the Governor invited movie star Kevin Costner to open a \$65 million

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<sup>2</sup> The State's initial negotiation position with Flandreau was that an Indian tribe should only have as many gaming devices as one individual was allowed under state law, i.e., 90 slot machines.

mega-casino two miles down the road from our proposed site. (The voters killed the special "Costner" legislation, which would have allowed 360 machines per individual, so the State is now looking for a new break to offer Mr. Costner. At the same time, the State has continued to freeze the Cheyenne River Sioux Tribe out of the Deadwood area based on its phony "non-proliferation" rationale.)

#### IV. THE TRIBE'S SEARCH FOR MEDIATION

The State's intransigence on slot machine numbers and casino locations were, from the Tribe's viewpoint, without any reasonable justification. So, the Tribe sought to resolve these issues first through the State Legislature, and next, through federal court. Neither avenue worked.

First, State Senator Scott Heidepreim put forward a bill to provide for arbitration of state-tribal disputes, and although we believed that such state legislation would have to be non-binding in the absence of congressional action, the Tribe was willing to try alternative dispute resolution. South Dakota Senate Bill 181 (1991). The Governor's Office killed the bill -- they did not want mediation or arbitration. They wanted to dictate terms.

Second, when our efforts to resolve these issues within the state government failed, the Tribe sought to use the IGRA "good faith" provisions to bring its case before a mediator. However, the Tribe found that neither the District Court nor the Court of Appeals were very interested in resolving the gaming dispute, so after three and a half years of negotiation and litigation, the Tribe was left with the option of several more years of (perhaps fruitless) litigation, or accepting the State's "drop dead" offer of a Flandreau type compact.

Accordingly, the Cheyenne River Sioux Tribe has come to realize that the IGRA is fundamentally flawed in requiring Tribe's to litigate prior to mediation. Mediation, which may cause less acrimony than litigation, should come before lawsuits. Therefore, if there are to be amendments to the IGRA, the Cheyenne River Sioux Tribe requests that States be given 180 days to compact with Tribes and if they fail to do so, then the Secretary of Interior must take over the compacting process.

#### V. DURO-TYPE JURISDICTION

There are nine Indian tribes in the State of South Dakota: Cheyenne River Sioux, Crow Creek Sioux, Flandreau Sioux, Lower Brule Sioux, Oglala Sioux, Rosebud Sioux, Sisseton-Wahpeton Sioux, and Standing Rock Sioux Tribes. We are all Sioux.

Therefore, the idea of "non-member" Indians does not really fit in South Dakota. 95% of "non-member" Indians on the various Sioux reservations are members of other tribes. Of course, we all

fought very hard to support Chairman Richardson's Duro-fix bill in Congress, and State Senator Paul Valandra was able to legislate a Senate Concurrent Legislation applauding the initial Duro-fix bill as follows:

WHEREAS, the Court indicated that it is the responsibility of Congress to address any void in jurisdiction that may be resultant from [Duro v. Reina]:

NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Sixty-Sixth Legislature of the state of South Dakota, the House of Representatives concurring therein, that the Congress of the United States be commended for passing [the temporary Duro-fix legislation]....

S.D. Senate Concurrent Resolution No. 15 (1991) (Passed by Yeas 33, Nays 0, Excused 2). One would believe that South Dakota's Public Policy favors tribal authority over non-member Indians.

Yet, the State Administration knows that the Sioux tribes, especially large land based tribes, are very protective of their jurisdiction. So, the State acquired jurisdiction over non-member Indians through its Flandreau compact, and then when Rosebud and Cheyenne River objected, the State offered to "give" the Tribes their jurisdiction back if they would agree to take half of the slot machines that the other tribes had -- that is, 120 machines. To protect their jurisdiction, Rosebud and Cheyenne River did so, but unfortunately, the investment company with which we have been working at Cheyenne River, now tells us that based on our remote location, a casino will not be profitable without at least 250 machines. Once again, we are faced with a Hobbeson's choice, our government authority or our economic viability.

We believe that the clear lack of justification for the State Administration's "wildcat" policy on Duro-type authority is clear justification for returning to a federal-tribal regulatory system.

Thank you for this opportunity to present the Tribe's view on the implementation of the IGRA in South Dakota.

*Mark Van Orman*

Attachment to "Report of Labor Force, Employment and Unemployment as of (month) (year)	Area ABERDEEN AREA	Reservation CHEYENNE RIVER S
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Methods and sources. Few Superintendents are in position to provide an actual count of population or labor force, although the use of such data by other Federal agencies has stimulated tribal interest in data improvement. Where an actual count has not been made, please describe briefly your method of estimating. Where studies from an earlier period have been drawn upon, identify each by title, author, and date and indicate how the data have been updated.

Bureau of Indian Affairs Enrollment Statistics, State Social Service Data, Various Employer Personnel Offices, BIA Social Services and BIA & Grant Schools.

SUPERINTENDENT'S EVALUATION OF DATA	RATING	LINES IN REPORT					
		A	F	M	R	S	V
With respect to accuracy of the data in this report, the indicated items are rated as follows:	Highly accurate						
	Reasonably accurate	x	x	x	x	x	x
	Unsatisfactory....						

(For items marked "unsatisfactory," explain your appraisal.)

Notes and Comments:

There is a decrease in total residents from 1991 report. This is a result of estimating the number of children eligible for enrollment who were not - BIA Social provided 1991 estimates. I chose not to use this method for 1992 report. I also used estimates from IHS, Community Health Representatives in 1991, which may have included non-Indians serviced by IHS. I again chose not to use this method for 1992. Not all local businesses responded to our inquiry regarding employment. The major employing agencies and businesses did provide statistics.

Superintendent's signature

*Russell McChesney*

Date:

4/22/93

## Garland David Little Star

Funeral services for Garland David Little Star, 39, Eagle Butte, were held Wednesday, Mar. 2, 1994, in the H.V. Johnston Cultural Center at Eagle Butte. Rev. Richard "Charging" Eagle, Rev. Leslie "Bobtail" Bear, Rev. Douglas Widow and Teddy Knife conducted the services and burial was in the Upper Cheyenne Congregational Cemetery at Bridger, under the direction of Kestling Funeral Home. Mr. Little Star apparently died of exposure. His body was found Thursday, Feb. 24, outdoors near the Eagle Butte Manor.

He was born Mar. 23, 1954 at Scaffold Community, the son of William and Nellie (Eagle) Little Star. He lived at Red Scaffold most of his life. At the time of his death he was living at the Eagle Butte Manor.

Survivors include two brothers, Norman and Howard Little Star, both of Eagle Butte and several aunts, including Grace Brown Wolf of Eagle Butte; Eulice Cook of Lantry and Hazel Bird of Racine, WI. He was preceded in death by his father and mother.

## Lucille Eloise Chasing Hawk

EAGLE BUTTE — Lucille Eloise Chasing Hawk, 50, died March 17, 1994, at Rapid City Regional Hospital.

Survivors include three brothers, Robert Chasing Hawk and James Chasing Hawk, both of Eagle Butte, and Eagle Hunter, Red Scaffold; three sisters, Alexina Evans, of Indiana, Bertha Chasing Hawk, Eagle Butte, and Delia Kohlus, Red Scaffold; and one grandson.

Services were March 22 at St. John's Episcopal Church in Eagle Butte with the Rev. Sydney Pratt and the Rev. Douglas Widow officiating.

Burial was at St. Stephen's Episcopal Cemetery in Red Scaffold under the direction of Luce Funeral Home of Eagle Butte.

## Dorrey Dietrick Brown Thunder

CHERRY CREEK — Dorrey Dietrick Brown Thunder, 17, Cherry Creek, died April 3, 1994, at his home.

Survivors include his parents, Clifton and Romaine Brown Thunder; three brothers, Torrey Brown Thunder, Patrick Brown Thunder and Zachary Brown Thunder; and five sisters, Lana Brown Thunder, Tenille Brown Thunder, LaToya Brown Thunder, Kennan Brown Thunder and Laprincia Brown Thunder, all of Cherry Creek.

Services were April 1 at United Church of Christ with the Rev. Leslie Bobtail Bear, the Rev. Richard Chasing Eagle and the Rev. Walter Hanson officiating.

Burial, with traditional graveside rites led by Russell Eagle Bear, Roy Circle Bear and Ray Circle Bear, was at the Dupris Family Cemetery east of Cherry Creek, under the direction of Luce Funeral Home of Gettysburg.



1 SDR No. 15, introduced by Senators Valandrea, Herschler, Lane,  
2 Russell, Hendler and Representatives Ryan, Cerny,  
3 Foshem, Gleason, Good, Moore, Lucas, O'Connor and Viker  
4 A CONCURRENT RESOLUTION, Resolving that Congress give tribes criminal jurisdiction over nonenrolled Indians.  
5 WHEREAS, the Supreme Court of the United States in *Duro v. Reina*  
6 has decided that jurisdiction of the offenses by Indian tribes of  
7 criminal misdemeanor jurisdiction over all Indians residing on their  
8 reservations by ruling that tribes only retain such powers over Indians  
9 as enrolled in their respective tribes; and  
10 WHEREAS, this ruling displays a lack of understanding of the reality,  
11 history and demographics of Indian country including the fact that  
12 there are enrolled Indians living on reservations who are  
13 not enrolled at that given reservation; and  
14 WHEREAS, such nonenrolled Indian may have lived on a reservation  
15 for the life of his father and may have been with a member who is  
16 enrolled, have had children with the enrolled member and own land and  
17 property on the reservation; and  
18 WHEREAS, such nonenrolled Indian is eligible for all programs that  
19 any Indian would be eligible for and is essentially given all the benefits  
20 of membership in the tribe including preference for employment;  
21 and  
22 WHEREAS, for the purposes of law enforcement, tribes have never  
23 distinguished between enrolled and nonenrolled Indians; and  
24 WHEREAS, the Court's ruling has created an entire class of people  
25 sectioned out of Federal State or tribal government law jurisdiction  
26 for misdemeanor crimes, thereby creating a potential for serious  
27 lawlessness; and  
28 WHEREAS, the state of South Dakota does not have the funding available  
29 to hire the many extra police, investigators, prosecutors and  
30 judges or to build the jails that would be necessary to prosecute misdemeanor crimes by Indians within the boundaries of Indian reservations  
31 and may not be able to successfully assert jurisdiction over such  
32 such lands were available; and  
33 WHEREAS, the nontaxable status of reservation trust lands combined  
34 with the relative poverty of Indian people and the fact that the  
35 lack of such a large job if jurisdiction were established; and  
36 WHEREAS, the Court indicated that it is the responsibility of the  
37 Congress to address any void in jurisdiction that may be resultant  
38 from this ruling;  
39 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Fifty-eighth  
40 Legislature of the State of South Dakota, the House of Representatives  
41 concurring therein, that the Congress of the United States be requested  
42 for passing Sections 807 (b) and (c) of P.L. 101-511 assigned  
43 by the President on November 5, 1990), which temporarily affirmed that

1 tribes do retain criminal misdemeanor jurisdiction over all Indians  
2 to make this provision of P.L. 101-511 permanent law.  
3 BE IT FURTHER RESOLVED, that the Secretary of the Senate of the  
4 State of South Dakota be and he is hereby authorized to send copies of this resolution to South Dakota's  
5 Congressional Delegation.  
6 Was read the first time.  
7 Sen. Valandrea moved that the rules be suspended for the adoption,  
8 passage, consideration and amending of SR No. 15, and that the Senate  
9 do thereon. The yeas and nays were taken.  
10 Adopted.  
11 The question being on Sen. Valandrea's motion that the rules be suspended  
12 for the consideration and adoption of SR No. 15, the yeas and nays were  
13 taken.  
14 And the roll being called:  
15 Yeas 33, Nays 2, Absent and Not Voting 0  
16 Yeas being:  
17 Allen; Baltz; Chisoline; Dunn; Barry; Fismore; Halverson;  
18 Haskell; Hershler; Herschler; Johnson; Killego; Lange; Maltz;  
19 Nickellaps; Nordfor-Burg; Nummer; Nelson; Olson; Petraly; Peterson;  
20 Ropp; Zamauska; Rouds; Salkars; Sharnai; Stensland; Stoltz;  
21 Spahn; Taylor; Valandrea; Wagner.  
22 Excused were:  
23 Miner; Porch.  
24 So the motion having received an affirmative vote of a two-thirds  
25 majority of the members-elect, Mr. President declared the motion carried,  
26 the rules were suspended and SCR No. 15 was adopted.  
27 Sen. Sharnai moved that the Senate do now recess until 1:30 p.m.,  
28 which motion prevailed and at 11:10 a.m. the Senate recessed.  
29 RECESS  
30 The Senate reconvened at 1:30 p.m., Mr. President presiding.  
31 REPORT OF STANDING COMMITTEE  
32 MR. PRESIDENT:  
33 The Committee on Legislative Procedure respectfully reports that  
34 SB Nos. 1013, 1041, 1206 and 1252 were delivered to his Excellency,  
35 the Governor, for his approval at 11:30 a.m., March 19, 1991.  
36 Respectfully submitted,  
37 HAROLD HALVERSON, Chairman

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From: Clare Chalik

On: LRL

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## STATE OF SOUTH DAKOTA

SIXTY-SEVENTH SESSION, LEGISLATIVE ASSEMBLY, 1992

175T0814

SENATE BILL NO. 0131

Introduced by: Senators Heidepriem, Emery and Valandra and Representatives Hagen, Gleason, Haley, Kane, Lucas and Moore

1 FOR AN ACT ENTITLED, An Act to require arbitration for resolving  
2 disputes between the state and a tribe.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For the purposes of this Act, the state includes any po-  
5 litical subdivision or any agency of the state.

6 Section 2. If the state and a tribe are unable to mutually agree on  
7 a resolution to any dispute, the dispute shall be submitted to arbi-  
8 tration. The disputes subject to arbitration include disputes regard-  
9 ing land use, water rights, hunting and fishing rights, taxation and  
10 environmental regulation.

11 Section 3. The dispute shall be submitted to a panel of three arbi-  
12 trators. One arbitrator shall be selected by the state. One arbitrator  
13 shall be selected by the tribe. The third arbitrator shall be selected  
14 from a list of five candidates supplied by the American arbitration  
15 association at the request of the parties. Within ten days after re-  
16 ceipt of the list, the state and tribe may disqualify up to two candi-  
17 dates from the list. The American arbitration association shall select

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Legislative Research Council at a cost of \$.014 per page.

Insertions into existing statutes are indicated by underscores.  
Deletions from existing statutes are indicated by ~~overstrikes~~.

-2-

1 the third arbitrator from the candidates not disqualified by the par-  
2 ties. The arbitration shall proceed in accordance with the rules of  
3 the American arbitration association within sixty days after the se-  
4 lection of the arbitration panel has been completed. The cost of arbi-  
5 tration shall be borne equally by the parties. The decision of a ma-  
6 jority of the arbitrators shall be final and binding on the parties.

In conclusion, the trial court abused its discretion in finding "good cause" to deviate from the adoption placement preferences in the Act. The court's finding that there is an unavailability of suitable families after a diligent search meeting the preference criteria is not supported by the evidence. Additionally, the trial court improperly applied the concept of permanency in determining the children's extraordinary emotional needs. Therefore, I would reverse the decision of the trial court.

*Counsel for appellant Leech Lake Band of Chippewa Indians:* Anita P. Fineday, Cass Lake, Minnesota

*Counsel for respondents E.C. and C.C.:* Wright S. Walling, Minneapolis, Minnesota

*Counsel for respondent Minnesota Dept. of Human Services and Beltrami County:* Tim Faver, Beltrami County Att'y, Shari R. Schluchter, Ass't County Att'y, Bemidji, Minnesota

*Counsel for guardian ad litem Diane White:* Charles R. Powell, Bemidji, Minnesota

*Counsel for Guardian Commissioner of Minnesota Dept. of Human Services:* Hubert H. Humphrey, III, Att'y Gen., LauraSue Schlatter, Ass't Att'y Gen., St. Paul, Minnesota

## SOUTH DAKOTA SUPREME COURT

### LUKE v. MELLETTE COUNTY, SOUTH DAKOTA

No. 18138-a-FEH (S.D. Sup. Ct., Nov. 19, 1993)

#### Summary

The South Dakota Supreme Court holds that the Mellette County Commission did not abuse its discretion in denying an application for a package malt beverage liquor license on trust land within the Rosebud Indian Reservation in a situation in which the Rosebud Liquor Authority has not issued a written confirmation allowing liquor sales and permitting county criminal jurisdiction on the property.

#### Full Text

Before MILLER, Chief Justice, HENDERSON, WUEST, SABERS and AMUNDSON, Justices

HENDERSON, Justice

#### Procedural History/Issues

Following denial of a package (off-sale) malt beverage liquor license by the Mellette County Commission (Commission), Wendell and Mary Lou Luke (Lukes), owners of Luke's Store, appealed the decision to the Sixth Judicial Circuit Court. On July 13, 1992, the trial court upheld the Commission, finding that it did not abuse its discretion by denying the license application due to the unsuitability of the store's location on Indian trust land in Mellette County. On appeal, the Lukes present these issues:

I. Did the Mellette County Commission abuse its discretion in denying the Lukes' liquor license application?

II. Is South Dakota's authority to regulate liquor transactions in Indian Country dependent upon the state's exercise of criminal jurisdiction over Indian Country?

We affirm on Issue I.

#### Facts

In September of 1990, the Lukes, husband and wife, first applied for a liquor license for their gas station/convenience store in the Corn Creek Community on land formerly part of the Rosebud Indian Reservation, but now held as Indian trust land by the United States government. Although the store is located within Mellette County, South Dakota, it is outside the state's criminal jurisdiction.

At a November 8, 1990 hearing, a Mellette County Commission member moved to table the Lukes' application until the Lukes obtained a tribal or federal license and confirmation in writing from the Rosebud Liquor Authority allowing liquor sales and permitting county criminal jurisdiction on the property. Delays by Rosebud authorities occurred, necessitating a new application and hearing on November 5, 1991. However, the Commission still had yet to hear from the Rosebud Liquor Authority concerning jurisdiction or tribal licensing. Additionally, three citizens had voiced opposition to granting the license, but failed to personally appear at the hearing. Commission denied the application.

On appeal, the trial court invalidated the citizen opposition reasoning because no one appeared at the hearing as required by SDCL 35-2-5; however, the license denial was upheld based upon location concerns by the Commission.

#### Decision

To receive a retail license, the board of county commissioners of the county in which the applicant seeks to operate has "discretion to approve or disapprove the application depending on whether it deems the applicant a suitable person to hold such license and whether it considers the proposed location suitable." SDCL 35-2-1.2. Quoting *Randall's-Yankton, Inc. v. Ranney*, 81 S.D. 283, 134 N.W.2d 297 (1965), this court addresses one question: "Did [Mellette County] Commission abuse its discretionary powers in refusing to approve [the Luke's Store] application for the reason that the location was, in its opinion, unsuitable?"

Commission denied the liquor license application, and the circuit court upheld that decision, because the store was located on Indian trust land within the Rosebud Indian Reservation, meaning that the state of South Dakota could not maintain criminal jurisdiction over the premises. See *State v. Spoiled Horse*, 462 N.W.2d 463 [17 Indian L. Rep. 5139] (S.D. 1990). Mellette County would, thus, be without power to enforce the state's liquor laws on the Luke's Store premises. Under *Randall's-Yankton*, 134 N.W.2d at 300, the adequacy of police facilities to properly police the proposed location is an important consideration in granting these applications. To secure law and order on the premises, Commission requested that the Lukes obtain written confirmation from the Rosebud Liquor Authority allowing liquor sales and permitting county criminal jurisdiction on the property. No such confirmation or authority was ever supplied, and the Lukes' application was denied.

Lukes complain that state authority to regulate liquor transactions on tribal land is not dependent on the state's exercise of criminal jurisdiction over that land. This was not addressed by the circuit court. *Weaver v. Boertz*, 301 N.W.2d 673 (S.D. 1981) (issues not raised at the trial court level will not be reviewed for the first time on appeal). Nor does it matter. The issue concerns adequacy of police protection. South Dakota does not have criminal jurisdiction over Luke's Store, so a commission which derives its authority from, and grants licenses under, South Dakota law has not abused its discretion by denying a license to one who cannot guarantee compliance with the same law. *Randall's-Yankton*, 134 N.W.2d at 300. *Accord Rushmore State Bank v. Kurylas, Inc.*, 424

N.W.2d 649, 653 (S.D. 1988). Lukes simply did not establish that the location was suitable.

Affirmed.

MILLER, Chief Justice, and WUEST and SABERS, Justices, concur.

AMUNDSON, Justice, dissents.

#### AMUNDSON, Justice, dissenting:

Under 18 U.S.C. § 1161, Congress authorized liquor transactions in Indian Country so long as the transactions complied with tribal and state law. In *Potawatomi Indian Tribe v. Oklahoma Tax Comm'n*, 975 F.2d 1459 [19 Indian L. Rep. 2167] (10th Cir. 1992), the court held that the state could require a tribe to obtain a 3.2 license to sell beer at its convenience store and golf course located on Indian land. In allowing this requirement the court stated: "[A] state's authority to regulate liquor transactions is not dependent on the state's exercise of jurisdiction over Indian Country." *Id.* at 1461.

In this case, the Mellette County Commissioners held:

As the property described above is on tribal lands criminal jurisdiction was discussed at length with no confirmation in writing submitted from the Rosebud Liquor Authority...allowing county criminal jurisdiction on this property...After the group left the meeting room the discussion continued and Bennett moved to include the above jurisdiction matter in his motion for denial of the application.

Since authority to regulate the licensing does not require an exercise of criminal jurisdiction in Indian Country, I cannot find any rational basis for equating lack of criminal jurisdiction to "unsuitable location" under the statute. This seems to be a classic example of comparing apples to oranges. The first time the words "unsuitability of location" crops up in this meager record is in the trial court's memorandum decision and findings of fact and conclusions of law. It seems totally inconsistent to require an applicant to secure a license because you have jurisdiction over its issuance and then turn down the application because the applicant cannot guarantee compliance with the liquor law. Where in the statute does it require a guarantee of compliance? If a license holder fails to comply, does not the licensing authority have the right to deny renewal of the license the next time around (SDCL 35-4-41) or even revoke the license if there is a crime wave at that location? SDCL 35-2-10. Other than this criminal jurisdiction issue, which is not berthed in the statute, I see no other evidence of unsuitability in the record.

Therefore, I would hold that it was an abuse of discretion to deny the applicant a liquor license.

*Counsel for appellants:* Krista H. Clark, Mission, South Dakota

*Counsel for appellee:* Michael Strain, White River, South Dakota

## MONTANA SUPREME COURT

### MONTANA v. BRADLEY

No. 93-227 (Mont. Sup. Ct., Nov. 30, 1993)

#### Summary

In an appeal of his conviction for negligent homicide and negligent vehicular assault in which the defendant assigns error to the district court's failure to have jury summonses personally served on Native Americans who had been served by mail and had failed to appear, the Montana Supreme Court holds that the defendant has failed to establish a prima facie case by failing to make any showing that the pool of prospective jurors contained an inadequate representation of Native Americans.

#### Abridged Text

Before GRAY, HARRISON, HUNT, SR., TRIEWEILER, and WEBER, Justices

GRAY, Justice

Darrin Dominic Bradley (Bradley) appeals his convictions of the offenses of negligent homicide, negligent vehicular assault and failure to wear a seat belt, claiming ineffective assistance of counsel and an unconstitutional exclusion of Native Americans from the pool of prospective jurors. We conclude that the performance of Bradley's counsel was not deficient and that Bradley has failed to establish that Native Americans were improperly excluded from the jury pool. Therefore, we affirm the district court.

On June 5, 1992, Bradley was involved in a three-vehicle accident while driving eastbound on U.S. Highway 2 near Chinook, Montana. Tammy Young (Young), another driver involved in the accident, suffered multiple traumatic injuries and died at the scene of the accident. The third driver, Matt Molyneux (Molyneux), received minor injuries.

Bradley was charged with, and pled not guilty to, negligent homicide, negligent vehicular assault, and failure to wear a seat belt. After a jury was impaneled, Bradley, a Native American, moved the district court to discharge the jury, arguing that all Native Americans listed as prospective jurors had been excluded from serving on the jury. The district court ascertained the basis for each peremptory challenge and challenge for cause, concluded that there was no concerted effort to exclude Native Americans, and denied the motion. The jury convicted Bradley on all charges following a trial held December 2, 1992.

After eliciting extensive statements from the family and friends of Young and Bradley, the district court sentenced Bradley to concurrent ten-year and six-month terms of incarceration for negligent homicide and negligent vehicular assault, respectively. The court suspended the sentences provided that Bradley obtain substance abuse counseling, perform community service, and serve 60 days in the county jail. Additionally, the terms of his suspended sentences required Bradley to pay a portion of his income into a trust fund established for the benefit of Young's two children and for any counseling required by Molyneux and Young's husband and children as a result of the accident. The court also ordered restitution totaling \$9,865.49 and fined Bradley an additional \$20 for the seat-belt violation.

Bradley moved for a new trial claiming that he had received ineffective assistance of counsel. The district court denied the motion because it was not filed within 30 days following the verdict as required by § 46-16-702, MCA. Bradley now requests this court to set aside his convictions and remand for

Submitted by Cheyenne River Sioux Tribe

Page 1 of 2



Submitted by Cheyenne River Sioux Tribe

Page 2 of 2







APPLICATION COVER PAGE  
ROBERT WOOD JOHNSON FOUNDATION  
HEALTHY NATIONS GRANT APPLICATION

**Applicant:** Cheyenne River Sioux Tribe, one of the constituent tribes of the Great Sioux Nation

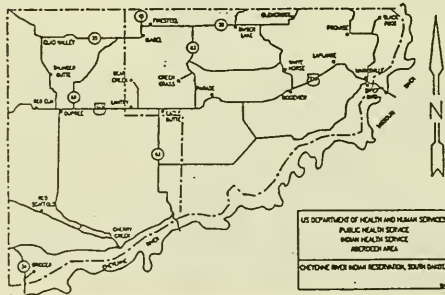
**Headquarters:** P.O. Box 590  
Eagle Butte, S.D. 57625  
(605) 964-4155

**Contact:** Mark C. Van Norman, Tribal Attorney

**Reservation:** Cheyenne River Indian Reservation  
2,800,000 acres (1,400,000 acres of trust land) in North-Central South Dakota

**Square Miles:** 4,393 square miles (roughly the size of the State of Connecticut)

**Population:** 12,218 reservation Indians (8,793 tribal members and 3,425 non-member Indians) according to the B.I.A. Report on Service Population.<sup>1</sup>



<sup>1</sup> The 1990 Census figure was 5,500 resident tribal members, but the Tribe believes that the B.I.A. figures are more accurate because many tribal members are reluctant to answer the Census.

# APPLICANT ORGANIZATION

At the culmination of the Powder War, the United States signed the Treaty of 1868 with the Sioux Nation and established the Great Sioux Reservation, which encompassed South Dakota west of the Missouri River. In 1889, Congress divided the Great Sioux Reservation into five smaller reservations: the Cheyenne River, Lower Brule, Pine Ridge, Rosebud, and Standing Rock Reservations.

The Minnicoujou (Plants By the Water), Itazipco (Sans Arc), Siha Sapa (Blackfoot), and Oohenumpa (Two Kettle) Sioux settled at the Cheyenne River Indian Reservation (2.8 million acres of land) and the United States recognizes them as the Cheyenne River Sioux Tribe. The Tribe adopted its Constitution and By-Laws in 1935, which establishes the Tribal Council as the governing body of the Tribe and Tribal Courts as an independent judiciary. The Tribal Council consists of the Chairman, the Secretary, and the Treasurer, who are elected at large, and 15 Council Members, who are elected from 6 districts. The constitutional mission of the Tribe is to establish justice, promote tribal welfare, develop tribal resources, and preserve tribal lands.

The tribal government has an extensive administrative branch, including: 1) an administrative office; 2) central records; 3) cultural center; 4) education dept.; 5) employment dept.; 6) financial dept.; 7) health dept.; 8) law enforcement dept.; 9) legal dept.; 10) m.i.s. dept.; 11) natural resources dept.; 12) operations and maintenance dept.; 13) planning dept.; and 14) social services dept. The Tribe has about 360 employees. (Organizational chart attached).

The Cheyenne River Sioux Tribe is the government for 12,218 Indians (8,793 tribal members and 3,425 non-member Indians) who reside on reservation. The Tribe provides government service, including: 1) law enforcement, including police protection and civil and criminal adjudication; 2) pre-school, elementary and secondary, and college education; 3) economic development, such as grocery marketing, cable television, and telephone service; 4) health services, including pre-natal care, child welfare care, field health clinics, a drug alcohol abuse prevention program, and sanitation services; and 5) social services, including child welfare services, and shelter homes for women and children.<sup>1</sup>

These services are provided in cooperation with the United States under the Indian Self-Determination Assistance Act, Pub. L. No. 93-638, and the Tribe, through its financial department, in 1992, for example, administered a general fund budget (which was derived from tribal revenue sources) of \$4.1 million, and a federal program budget of \$11.3 million. The Tribe's financial system is audited by independent certified public accountants each year, and must be certified by those accountants to meet rigorous federal regulations. The Accountant Certification for 1992 states: "the Cheyenne River Sioux Tribe financial management

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<sup>1</sup> The Tribe works in close cooperation with agencies of the United States in federal provision of services to reservation residents, including the Bureau of Indian Affairs (BIA), Indian Health Service (IHS), Corps of Engineers, Dept. of Agriculture, Dept. of Education, Federal Highway Administration, Housing and Urban Development, and U.S. Fish and Wildlife Service. The Tribe also works with the state and local governments and non-profit organizations, such as the Teton Ambulance Service and the Sacred Heart Center, in providing services to reservation residents.

system and procurement and property management system reasonably meets the standards contained in Title 25 Regulations 276.7 and 276.11," and explains, in regard to the federal requirement for current, accurate, and complete financial statements, the Tribe's "financial management system . . . provide[s] current, accurate and complete financial statements."

If the Tribe is awarded a Health Nations Grant, the grant activities will be implemented by the Director of the Healthy Nations Program, under the immediate supervision of the Tribe's Administrative Officer and the general supervision of the Tribal Chairman and Tribal Council. Of course, one responsibility of the Director will be to coordinate his activities with the other federal, tribal, and community programs engaged in fighting the War on Alcohol Abuse. The expenditure of grant funds will be monitored by the financial services department under immediate supervision of the Tribal Comptroller and general supervision of the Tribal Treasurer and Tribal Council.

Although the Tribal Council has also established tribal corporations which promote economic activity and also supports cultural activity, including pow-wows, traditional ceremonies, and restoration of tribal buffalo herds, the standard of living of tribal members is the lowest in the United States. In 1980, Ziebach County was the third poorest County in the Nation, and in 1990, was the seventh poorest county in the Nation. (1980, 1990 Census). Tragically, alcohol abuse goes hand-in-hand with the devastating poverty on the Cheyenne River Reservation.

## ABSTRACT

The Cheyenne River Sioux Tribe is a federally recognized Indian tribes and is one of the constituent tribes of the Great Sioux Nation. The Tribe is located on the Cheyenne River Sioux Reservation, approximately 2.8 million acres in North-Central South Dakota. Roughly 12,000 Indians live on the Reservation, according to B.I.A. labor force statistics (which the Tribe views as more accurate than census figures because of reporting bias).

The Tribe is devastated by alcohol abuse. (Alcohol is the drug of choice on the Reservation). Tribal members suffer death from alcohol related causes, such as alcoholism, motor vehicle accidents, other accidents, suicide, homicide, and liver disease, at rates from 203% to 688% greater than the general population of the United States. Most trauma treated at IHS and tribal health facilities on the Reservation are alcohol related, and alcoholism and alcohol abuse have devastating impacts on reservation health care by depleting an already inadequate budget.

Alcohol abuse also has deleterious impacts on the tribal education system, robbing students of families with alcohol abuse from their chance at a decent education, and alcohol abuse drains the tribal government. 90% of the crime on the reservation, for example, is alcohol related. Moreover, alcohol abuse compromises the abilities of the tribal workforce, and the Tribe as employer suffers along with other reservation employers. Thus, alcohol abuse exacerbates unemployment.

The Tribe, together with the federal government and the reservation community, has already established a strong alcohol

abuse prevention and treatment program. The program includes: the Tribal Council's declaration of War on Alcohol Abuse, strong alcoholic beverage control policies, school and community alcohol abuse prevention education, traditional cultural programs offered in alcohol-free settings, outpatient counselling, and inpatient alcohol abuse prevention therapy (off the Reservation).

Nonetheless, although the Tribe has the ingredients for a comprehensive approach to alcohol abuse, the existing programs lack coordination because federal funding formulas segregate responsibility in different programs and no single program has sufficient resources to draw the rest together. Moreover, the existing treatment dollars are not utilized optimally because after alcohol abusers complete inpatient therapy at a cost of \$3,000 to 6,000 per patient, they are immediately returned to the environment that set them into the downward spiral of alcoholism in the first place. Outpatient counselling cannot make up for this lack of family and community support.

Accordingly, in Phase I, the Tribe envisions the Healthy Nations Program Director as Chairing the Cheyenne River Sioux Tribe Task Force on Alcohol Abuse Prevention to coordinate the existing alcohol abuse prevention and treatment programs, and gathering information necessary to define the Tribe's comprehensive program against alcohol abuse for Phase II.

Part of the Phase II proposal will include a full spectrum treatment plan that incorporates primary social groups, i.e. the family and local community, into an after care program that uses traditional healing approaches.



List of Participating Agencies, Organizations, Civic Groups, and Government Entities:

Cheyenne River Sioux Tribe  
Attn: Mark C. Van Norman  
P.O. Box 590  
Eagle Butte, SD 57625  
(605) 964-4155

Tribal government includes  
Alcohol Abuse Prevention  
and Mental Health Programs,  
Tribal Police Department,  
(D.A.R.E.), Tribal Courts,  
and Cultural Center.

Role: Applicant/Potential Grantee/Service Provider

Reservation District Governments (6) may be reached care of the  
Tribe. Role: Community Education/Involvement facilitators.

Indian Health Service  
Attn: Dr. Jeff Henderson  
Eagle Butte, S.D. 57625  
(605) 964-3004

IHS includes hospital and  
Eagle Butte Clinic and 93-  
638 contractor

Role: Alcohol Abuse Prevention and Treatment Provider

Bureau of Indian Affairs  
Attn: Russell McClure  
Cheyenne River Agency  
Eagle Butte, S.D. 57625  
(605) 964-6611

BIA provides social services,  
child protection service, and  
93-638 contractor

Role: Alcohol Abuse Prevention Provider

Bureau of Indian Affairs (Ed.)  
Attn: Cherie Farlee  
Cheyenne River Agency  
Eagle Butte, S.D. 57625  
(605) 964-8722

BIA Ed. provides education  
services, drug/alcohol-free  
school counselling, and 93-  
638 contracting

Role: Alcohol Abuse Prevention Provider

City of Eagle Butte  
Attn: Patricia Maynard, Mayor  
General Delivery  
Eagle Butte, S.D. 57625

Local municipal government;  
coordinates governmental  
services with the Tribe for  
the largest community on the  
Reservation

Role: Community Education/Involvement facilitator

Cheyenne River Community College  
Attn: Steven C. Emery, Chrmn.  
P.O. Box 220  
Eagle Butte, S.D. 57625

Tribally controlled  
community college

Role: Community Education/Involvement Facilitator

Sobriety Support Group	Local Sobriety Self-Help
Attn: William Picotte	Group, provides alternatives
General Delivery	to alcohol use and promotes
Eagle Butte, S.D. 57625	traditional activities

Role: Role Model; Community Education/Involvement Coordinator

Sacred Heart Center	Religious Order provides
Attn: Sr. Ruth Geraets	shelter care services and
P.O. Box 2000	counselling and community
Eagle Butte, S.D. 57625	education services

Role: Alcohol Abuse Prevention and Treatment Provider; Community Education/Involvement Facilitator

## PROGRAM NARRATIVE

## I. THE CHEYENNE RIVER SIOUX RESERVATION COMMUNITY

The Cheyenne River Sioux Reservation was established by the Act of March 2, 1889, which divided the Great Sioux Reservation into five smaller reservations. The Cheyenne River Reservation boundaries include roughly 2.8 million acres of rolling prairie lands (about the size of the State of Connecticut). B.I.A. labor force statistics indicate that there are roughly 12,000 Indians on the Reservation.<sup>1</sup>

In 1908, the Reservation was opened to homesteading, and about half of the reservation land was sold to non-Indians. The reservation boundaries were not diminished, however, and as a result, of the 18 reservation communities, the Cities of Dupree (pop. 500 -- 50% Indian), Isabel (pop. 350 -- 20% Indian), and Timber Lake (pop. 700 -- 35% Indian), claim to be "non-Indian" communities because a majority of residents are non-Indian. The City of Eagle Butte is the largest city on the Reservation with roughly 2,500 to 3,000 residents and is 80% Indian. Overall, the population of the Cheyenne River Sioux Reservation is 66% Indian, according to the 1990 Census.

The Cheyenne River Sioux Tribe accepted the provisions of the Indian Reorganization Act and adopted a tribal Constitution and By-Laws in accordance therewith. The Tribal Council, made up

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<sup>1</sup> Throughout this application, the terms Indians and tribal members are considered to be roughly equivalent because the non-member Indians on the Reservation are, for the most part, members of other Sioux tribes, and share common cultural traditions and unfortunately also share common problems with alcohol abuse.

of the Chairman, Secretary, Treasurer, and 15 Representatives, is the governing body of the Tribe and the Tribal Courts function as an independent judiciary. As described above, the Tribal Council has established an extensive administrative branch of government.

Eagle Butte is the center of tribal government, and although the Tribe provides government services throughout the Reservation, many federal and tribal services are available only in Eagle Butte. The Reservation is made up of six representative districts, each has its own community building, and the district councils have an advisory role in tribal government. The Indian residents from outlying communities, such as Cherry Creek, Red Scaffold, White Horse, Black Foot, and Swift Bird often travel to Eagle Butte for federal and tribal services. From Swift Bird, the trip is 56 miles, and Red Scaffold is about 40 miles.

The Reservation encompasses both Dewey and Ziebach Counties in South Dakota, and the Indian population is very poor. Thus, Ziebach County was the third poorest county in America in the 1980 Census, and the seventh poorest county in the 1990 census. There is 60 to 85% unemployment, and the economy is largely an agrarian farm/ranch economy and a service economy. Therefore, welfare is an important source of income for many families of unemployed Indians, and the economy is quite active on the first day of the month when checks are issued. Later in the month, the economy slows as people struggle to survive on the meager income.

Although Dupree, Isabel, and Timber Lake claim to be non-Indian, few economic services are offered in the smaller, remote

Indian communities and tribal members from Red Scaffold, Cherry Creek, and Thunder Butte often patronize Dupree, tribal members from White Horse patronize Timber Lake, and tribal members from Green Grass patronize Eagle Butte. Thus, alcohol sales in those cities have a significant impact on the Indian population. The border towns of Gettysburg 10 miles east of the Reservation (pop. 1,500) and Faith 5 miles west (pop. 800) have a similar relationship with Reservation's Indian population. Surprisingly, though there is considerable racial tension in all of those cities, the racial tension in the Faith and Gettysburg is not as great.

## II. THE PROBLEM OF ALCOHOL ABUSE AMONG THE CHEYENNE RIVER SIOUX

### A. Introduction: The Severe Impact of Alcohol Abuse<sup>2</sup>

The Cheyenne River Sioux Tribe is devastated by alcohol abuse and its attendant problems. Dr. Terrence Sloan, the former Director of the Aberdeen Area of the Indian Health Service, has testified that the Cheyenne River Sioux Tribe suffers terrible health and social damage from alcohol abuse:

mortality associated with alcoholism has been . . . extremely high in comparison with other population groups within the United States. It leads to tremendous early loss of life, fracturing of families, tremendous morbidity; both on this reservation and within the Aberdeen Area.

Cheyenne River Sioux Tribe v. Isabel, et al., 18 Indian L. Rep. 6079 (Chey. R. Sx. Sup. Ct. 1991) I trial transcript at 144-46

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<sup>2</sup> Alcohol is the drug of choice among the Cheyenne River Sioux. Of Course, federal and tribal alcohol abuse prevention programs also contain educational materials designed to combat drug abuse, and federal and tribal alcohol abuse prevention programs deal with marginal drug abuse.

(hereinafter cited as "Trial Tr.").<sup>3</sup>

Because alcohol abuse negatively impacts a person's entire lifestyle -- spiritual, social, economic, and personal -- alcohol abuse "fractures" families. I Trial Tr. at 220. Children of alcohol abusers suffer from parents' alcohol abuse, in terms of abuse and neglect, wives often suffer physical abuse as a result of their husband's alcohol abuse, husbands too suffer from their wife's alcohol abuse, and elderly tribal members suffer from their adult children's alcohol abuse. Id. at 223, III Trial Tr. at 19-21.

As a direct result of the negative impact of alcohol abuse on individual and family life, the reservation health care system expends most of its resources coping with alcohol induced trauma, disease and death, the social service system is overwhelmed by child abuse and neglect, and welfare cases brought on by alcohol abuse, the education system is burdened and rendered ineffective, tribal police spend 90% of their energy and resources fighting alcohol related crimes, and the Tribe and other employers feel the negative effects of employees' alcohol abuse among employees through tardiness, absenteeism, reduced productivity, and high turnover rates. See discussion immediately below.

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<sup>3</sup> As discussed below, the Cheyenne River Sioux Tribe initiated an action to enforce its alcoholic beverage control law against all reservation liquor dealers in 1988, and during trial the Tribe introduced testimony from 23 witnesses, including a number of tribal and federal government program directors. This testimony demonstrated the severe impact of alcohol abuse on tribal government and tribal members. The trial testimony is used herein for its authoritative content.



Thus, not only is alcohol abuse a serious, widespread problem on the Cheyenne River Indian Reservation, most people on the Reservation would attest that alcohol abuse is devastating to the Tribe and pervades the daily life of tribal members. See II Trial Tr. at 116 (Pete Horn, Alcohol Abuse Treatment Counselor) ("alcoholism is really crippling the Cheyenne River Reservation . . . it seems to affect everyone, whether they are drinking or not"). Indeed, in a 1985 study (conducted by the Cheyenne River Sioux Tribe, the IHS, the Center for Disease Control, and the South Dakota Department of Health) 60% of tribal members thought that alcohol abuse was the number one reservation health problem. See Planned Approach to Community Health Program Summary (1988) (the "PATCH Report") at 13.

1. Alcohol Related Mortality Among Tribal Members

Dr. Sloan has also explained that, in his professional opinion, the surest way to demonstrate the nature and severity of alcohol abuse and its attendant problems is to review the IHS statistics on alcohol related mortality among Indians on the Cheyenne River Reservation. IHS statistics show that the causes of mortality frequently associated with alcohol abuse are several times higher among the Cheyenne River Sioux Tribe than among the general population of the United States:

Alcoholism Mortality Rate

Cheyenne River Sioux	U.S. General
47.3/100,000	6/100,000

Motor Vehicle Accident Mortality Rates

Cheyenne River Sioux	U.S. General
63/100,000	19.5/100,000

Other Accident Mortality Rates

Cheyenne River Sioux	U.S. General
57.6/100,000	15.2/100,000

Suicide Mortality Rates

Cheyenne River Sioux	U.S. General
61.6/100,000	11.7/100,000

Homicide Mortality Rates

Cheyenne River Sioux	U.S. General
26.1/100,000	8.6/100,000

Liver Disease Mortality Rates

Cheyenne River Sioux	U.S. General
46.7/100,000	9.1/100,000

"Aberdeen Area Tribal Chairman's Health Board Meeting January 29-30, 1992: Service Unit Percentile Ratings of Mortality Rates" (IHS Office of Planning, Evaluation, and Legislation) at Tab A. Thus, alcohol related mortality rates among the Cheyenne River Sioux range from 203% to 688% above the alcohol related mortality rates of the general population of the United States. Id.

## 2. The Impact on the Reservation Health Care System

The Indian Health Service operates a hospital, including an emergency room, and an outpatient clinic in Eagle Butte, which is the headquarters of the tribal government. Dr. Theo Matheny, the former Director of the Eagle Butte hospital and clinic, explained

several areas where alcohol abuse had resulted in severe health problems for tribal members:

We will see fetal syndrome in infants and children. This involves a constellation of symptoms and signs. Mostly consisting of developmental delays, mental slowness, and in severe cases there would be facial anomalies. . . . It is caused by exposure in utero of the fetus to alcohol. That means caused by the pregnant mother drinking alcohol. . . .

I encountered a pregnant woman, she presented herself to the hospital intoxicated and was approximately four to five months pregnant. . . . the level of alcohol [was] .370. It ha[d] a very good chance of causing fetal alcohol syndrome. Particularly since the exposure is during the earlier more formative stages of the pregnancy when the major organs of the fetus are still being formed.

Id., at 89-90, 107. Other expert testimony indicated that, based on the Tribe's alcohol abuse index, the FAS and FAE rates on the Cheyenne River Sioux Reservation are among the highest known in the world (roughly 1 per 100 births). III Trial Tr. at 115.

Moreover, in "a number of cases in which alcohol was very prevalent during the woman's pregnancy, [pregnancy] terminated in miscarriage because of vaginal bleeding and non-compliance of the patient in keeping bed rest. . . ." Dr. Matheny, supra. Alcohol abuse among pregnant women causes injury and death to the unborn children of tribal members when the mothers suffer major trauma:

There was a solo automobile accident down in Bridger [see Reservation Map] that occurred at approximately 4:00 p.m. . . . [S]everal ambulances were coming in with three victims with major injuries [and] one person had been pronounced dead at the scene. . . . The most critically injured victim was a young woman who was approximately 26, 27 weeks pregnant. She had massive head injuries, had a dilated pupil . . . indicating very serious underlying injury to the brain. She also had low blood pressure and possibly injury to the lung.

We stabilized her as best we could including intubation because she was not breathing properly. We arranged for transport as soon as possible for referral to the trauma center in Bismarck. . . . [T]he pregnant woman died. A cesarean section was done on her in an attempt to save the baby. The baby lived for several hours after the emergency cesarean operation and then died as well.

I Tr. at 102-04. The accident was caused by drunk driving. Id.

Dr. Matheny testified that in general 90% of the major trauma that is treated at the IHS hospital and clinic is related to alcohol abuse. I Trial Tr. at 89. Four of five major, life threatening auto accidents that he personally treated in 1990 were alcohol related. (The only accident which was not caused by alcohol abuse involved a non-resident who was simply crossing the Reservation on the way home from her college in the Black Hills.)

Id. Dr. Matheny explained that purposefully inflicted injuries are also primarily alcohol related. For example, Dr. Matheny had recently provided care in the following circumstance:

a man from one of the outlying communities was inebriated and had been with some . . . brothers or friends who were also inebriated and was struck with a baseball bat to his head. Presented to the emergency room in the middle of the night with a very severe head injury. He was not responding properly. His level of consciousness was diminished. He had a serious skull fracture with blood coming from one of his ears. And required transport to . . . neurosurgical care at our referral hospital in Bismarck . . . it was life threatening.

I Trial Tr. at 106. That type of domestic violence is often treated at the IHS hospital.

The IHS hospital also treats the chronic effects of alcohol abuse: liver disease, intestinal bleeding, delirium tremens, etc. And, besides increasing medical costs by causing emergency health

conditions, alcohol abuse increases the cost of treatment because alcohol abusers often disregard medical advice:

An example would be an individual this past year who was intoxicated, he broke his ankle while he was intoxicated. He required surgical repair of the broken ankle and was referred to an outside hospital for this purpose.

After a week or so in the hospital he was discharged home. He began drinking again and began to walk on his ankle against the doctors advice and he missed the follow-up care and ended up with infection in surgical wounds. We elected to put him in the hospital so that we could have some control over his situation knowing that he had a propensity to drink. . . .

My estimate would be approximately \$200 a day for in-patient care taking up the in-patient hospital bed with the hospitalization of six weeks, which is 45 days, \$200 a day would be -- roughly \$9,000.

I Trial Tr. at 110-11.

In addition to the burden on the federal government, the tribal government's health system is also severely burdened by alcohol related conditions. The Tribal Health Department runs four field health clinics in the outlying communities, and most of the conditions presented at the clinics are caused by alcohol abuse. George Whirlwind Soldier, a tribal physician's assistant who runs the Swiftbird-White Horse Clinic, described a "real high incidence" of alcohol related conditions, including a three month old Indian girl was brought into the clinic with two broken legs inflicted by her father. III Trial Tr. at 19.

Mr. Whirlwind Soldier also observed elderly abuse among tribal senior citizens at his clinic:

One time I didn't see this patient at appointment time, this was a fragile diabetic. I sent the CHR out to pick her up, the CHR returned and told me this lady

refused to come in. So then I got a little bit insistent and I sent the CHR back out. . . . So the CHR brought the patient in. And I called her into the room and started talking to her, she was hiding her face, from here to here, sitting like -- (indicating with hands over face). We talked about the diabetes, I asked her about what was going on, and she started to cry. I pulled her hands away. She had a great big black eye. . . . And I came to find out that she got a 26 year old son who wanted her SSI check. And when the lady wouldn't give him her SSI check he punched her and took the check. . . . [S]he all along protected her son. Nothing happened to him.

Id. at 20-21.

The Tribal Health Department also operates a Tribal Mental Health Program and a Tribal Alcohol/Drug Abuse Prevention and Treatment Program. The mental health program devotes its energy to suicide prevention, family counseling and referrals to outside mental health agencies. 100% of the children who come into the mental health program have been affected by alcohol abuse. The 13 completed suicides that occurred on the Cheyenne River Sioux Reservation from 1985 to 1990 were all related to alcohol abuse: indeed, 10 of the victims were under the influence of alcohol at the time of their deaths. II Trial Tr. 17-54. The alcohol/drug prevention program expends \$235,000 annually for its outpatient counselling and community education, and alcohol program staff find that their efforts can reach only a very limited number of those suffering from alcohol abuse. II Trial Tr. 116.

### 3. The Impact on the Reservation Social Service System

The B.I.A. provides social services, that is Indian child protection services and general assistance (welfare), to Indians on the Cheyenne River Reservation. According to statistics that



the B.I.A. is required to compile under federal law, 92% of the child abuse cases are alcohol related, and 100% of the neglect cases are alcohol related. I Trial Tr. at 217. 50 to 60% of general assistance clients on the Reservation abuse alcohol. Id.

Dani Dean, the Director of the B.I.A.'s Cheyenne River Agency discussed the negative impact of alcohol abuse on family life:

[Alcohol abuse] affects their whole lifestyle . . . it affects their emotional psychological self, the physical self, and the spiritual self. A lot of cases that we are getting now . . . are second and third generational problems with alcohol. . . .

[T]he abuse of alcohol has just gotten in the way of their parenting skills completely. . . . [W]e see the whole family is in a state of dysfunction, we define that as being unable to take care of their needs, general physical needs, their emotional needs, and again their spiritual needs. They don't realize some of the behaviors that they're doing are not normal. Some of them have such generational problems they don't realize what normal is anymore. So in turn they learn dysfunctional behaviors and pass them on to the next generation.

I Trial Tr. at 220-23. Of course, it is well known that those who are abused as children are likely to become the abusers as adults. Id.

The B.I.A. budget for social services is about \$315,000 annually, and as demonstrated above, those funds are expended primarily to cope with alcohol related problems.

#### 4. The Impact on the Reservation Education System

Alcohol abuse results in dysfunctional families, and thus, negatively affects the educational abilities of Indian children. Ms. Dean explained:

I have . . . observed in my work children are so affected and you can get it from the grades, but a lot of times what happens is you get a kid . . . who has dysfunctional family life, say abusing alcohol all weekend, go to school Monday so tired from having to deal with what happens that weekend, they're learning nothing. . . . And that lasts a period of about two days. . . . [T]hen you start seeing an increase in anxiety because they know something is going to happen that [next] weekend. . . . [K]ids coming from dysfunctional homes with alcohol abuse usually have about two good days of learning each week.

I Trial Tr. at 224. Thus, alcohol abuse has a negative effect on educational opportunities of the Indian children of alcoholics and alcohol abusers.

Additionally, those Indian children suffering from FAS or FAE are robbed of their futures:

When you got children that are developmentally delayed or only reach a certain educational level you are going in the future to have them only able to reach a certain type of skill, too, for employment. So you are going to have high unemployment. . . . [T]here is going to be a need for educational programs to suit their needs to be developed.

I Trial Tr. at 229. In other words, many career opportunities are simply beyond the reach of FAS and FAE children, and though the tribal, state, and federal government provide these children with special education programs to ameliorate the effects of FAS and FAE, there simply is no cure for these alcohol induced birth defects.

##### 5. The Impact on Tribal Criminal Justice System

Alcohol abuse imposes serious governmental burdens on the Cheyenne River Sioux Tribe's criminal justice system. Tribal police report that over 90% of reservation crimes are alcohol related, I Trial Tr. at 184, and accordingly, the Tribe expends

approximately 90% of the approximately \$1,000,000 law enforcement budget in resolving alcohol related crimes. Id. Therefore, with a Reservation population of about 6,000 Indians, tribal police made over 12,000 arrests, including 355 DWI arrests. Id. at 185. The tribal criminal court system, of course, bears a commensurate burden.

#### 6. The Impact on Reservation Employment

Unemployment on the Cheyenne River Reservation ranges from 60% up to 85% annually. PATCH Report at 9. The Cheyenne River Sioux Tribe is the largest employer on the Reservation with 360 employees, and the Tribe experiences difficulties as an employer because of employee alcohol abuse problems, including tardiness, absenteeism, poor job performance, health and safety problems, and high turnover. II Trial Tr. at 62. Alcohol abuse is common among the tribal work force. Id.

#### B. The Prevalence of Alcohol Abuse Among Members of the Cheyenne River Sioux Tribe

When evaluating the problems alcohol abuse, possibilities for regulation of the use and distribution alcoholic beverages, and programs to prevent and treat alcohol abuse, an understanding of the prevalence of alcohol abuse and the drinking styles in the Indian community can be a vital tool for policy formulation.

The "drunken Indian" is a common stereotype, and many people believe that all or most Indians drink heavily or that Indians as a racial group are genetically predisposed to alcoholism. Based on these stereotypical beliefs, many, both Indian and non-Indian, advocate prohibition as the only viable means of reducing alcohol

abuse. P. May and M. Smith, "Some Navajo Opinions About Alcohol Abuse and Prohibition: A Survey and Recommendations," *Journal of Studies on Alcohol* 49(4) at 324-334 (1988) (discussing Navajo opinions advocating prohibition). Field research, studies, and the Indian experience to date, however, suggest that the federal government's centuries old prohibition policy for Indian people has been a failure. Accordingly, rather than polarize debate between "wet" and "dry" communities, tribal governments should consider regulatory options and community intervention models as alternative to the extremes of prohibition and unregulated sales of alcohol. Then, accurate information becomes vital.

The PATCH Report focussed on the prevalence alcohol use and drinking styles among Indians and non-Indians on the Reservation and surrounding communities. The PATCH Report found that when considered in proportion to their respective populations, fewer tribal members (45.9%) drank alcohol than neighboring non-Indians (61%). The Report also demonstrated, however, that those tribal members who drank alcohol were more likely to engage in "binge" style drinking than non-Indians (37.1% tribal members vs. 28.7% non-Indians had five or more drinks on one occasion in the prior month; 14.6% tribal members vs. 10.1% non-Indians has sixty or more drinks per month).

Some of this "binge" drinking may be attributable to the difference in age of the Indian and non-Indian populations. The average age of the Indian population on the Cheyenne River Sioux Reservation is approximately 18 to 19, while the average age in

the general U.S. population is 32. (According to a 1987 survey, "over 80% of Cheyenne River Sioux students who drink were drunk within the last year") PATCH Report at 41. Authorities posit that the "binge" style of drinking may also be attributable to the prolonged Indian experience with prohibition. Rep. John J. Rhodes of Arizona, for example, explained during the hearing to repeal the federal prohibition on sales of alcohol to Indians that: "the Indian when he buys a bit of liquor, is almost in the same situation that perhaps a few other people were in the days of prohibition when, as soon as the bottle came into one's hands, it was immediately consumed before someone came around and took it away." Hearings on H.R. 1055 before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess. (March 18, 1953) at 2-4.

Moreover, the heavy "binge" drinking is associated with the extremely dangerous acute effects of alcohol abuse, i.e., drunk driving and other accidental injuries, suicides, and homicides. See P. May, Substance Abuse and American Indians: Prevalence and Susceptibility, The International Journal of the Addictions, vol. 17 no. 7 1185-1209 (1982), and discussion above. Again rather than focus on prohibition (most tribal members (64.1%) who chose to abstain do so already), these Cheyenne River Sioux specific statistics suggest that alcohol abuse prevention policy should focus on the youth, who comprise a very large portion of the population and may well be involved with experimental "binge" drinking. The PATCH Report found: "Preventive interventions

must be directed toward reducing the excess number of young male deaths." Id. at 15.

Alcohol abuse prevention policy must also focus community attention on the range of policy options available to reduce or eliminate unacceptable drinking behavior (i.e., binge drinking, drunk driving, public intoxication, violence and drinking while pregnant), and the Tribe's ability to tailor those policies to meet the specific needs of the community. The PATCH Report found: "More than half of CRS deaths are preventable, if the CRST and the tribal members made collective and individual changes to reduce risk factors that contribute to the leading causes of death" they could very well reduce mortality and thus increase life expectancy. And, alcohol abuse prevention policy must also focus on FAS and FAE, which, as discussed above, are devastating to the Tribe.

### III. THE CHEYENNE RIVER SIOUX TRIBE'S WAR ON ALCOHOL ABUSE

Based on the very serious and widespread problem of alcohol abuse among the Cheyenne River Sioux Tribe, and the reservation community's identification of alcohol abuse as its primary health problem, the Cheyenne River Sioux Tribe has made the reduction of alcohol abuse one of its highest priorities.

For example, at the conclusion of the PATCH study, tribal sponsors of the study met with "Tribal leaders and grassroots Community groups" to discuss the results. "After considerable review of this information and discussion, the following health priorities were established by the Tribe:



1. Alcohol
2. Suicide
3. Teen Pregnancy
4. Diabetes
5. Poverty

The Tribal health priorities are consistent with several of the objectives of the Aberdeen Area Prevention Plan." PATCH Report at 49.

In 1987, the Cheyenne River Sioux Tribal Council declared War on Alcohol Abuse and established its goal to free Cheyenne River Reservation from alcohol abuse by the year 2000. In furtherance of that goal, the Tribal Council resolved to:

1. "[P]ursue state, federal, local and private sector funding to institute comprehensive regional alcohol and drug prevention programs utilizing elders, concerned volunteers, Lakota people and youth in each District;"
2. "[P]ass ordinances against alcohol and drugs and strictly enforce these ordinances through the [tribal courts]."
3. "[Establish in] each school in each District . . . a comprehensive drug prevention program," and
4. "[S]et an example to our children and to each other [by prohibiting] alcohol [possession or sales] at any Tribal function."

Cheyenne River Sioux Tribe Resolution No. 313-87-CR, annexed to the PATCH Report.<sup>4</sup> Tribal agencies, including the tribal police department, tribal mental health department, tribal alcoholism

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<sup>4</sup> In 1985, the Tribal Council identified drunk driving as a serious concern, instituted mandatory penalties, and directed the tribal police to strictly enforce drunk driving laws. I Trial Tr. at 181-82.

treatment program, and the tribal community college, established joint working groups to implement the Tribal Council's policies. At the same time, the Tribe asked for assistance from the federal government to prevent the establishment of two "3.2 bars" near tribal housing projects, but the request was denied. The Tribe then determined to use its own regulatory power to prevent the opening of these establishments. Pursuant to the congressional delegation of authority to regulate Reservation liquor traffic and its inherent sovereignty, the Tribal Council amended the Alcoholic Beverage Control Law to require, inter alia, all liquor establishments of the Reservation to obtain a tribal license. The owners of the proposed 3.2 bars were informed that they would not be granted tribal licenses and voluntarily chose not to open. Several liquor establishments operated by non-Indians on the reservation, however, refused to comply with the Alcoholic Beverage Control Law, although they have substantial business relations with tribal members. Therefore, the tribe sued them in tribal court. The testimony at the trial proved the need for tribal regulation of reservation liquor traffic. Operations of the unlicensed liquor establishments were shown to have demonstrably serious, negative effects on the tribe and tribal members, including contributing to the following:

1. Economic hardships, including unemployment and the deprivation of the essentials of life, due to alcohol abuse;
2. Alcohol-related elderly, spousal, and child abuse;
3. Alcohol-related disease, injuries, and fatalities;

4. Fetal Alcohol Syndrome and Fetal Alcohol effect; and

5. Burdens on the tribal health care delivery system, the tribal police, the tribal courts, and other tribal agencies.

Furthermore, the tribe demonstrated that the unlicensed liquor establishments were irresponsible in the operation of their businesses. For example, one bartender testified that people may safely consume 6 to 10 drinks or more in one sitting. Another bartender opened at 7:00 a.m. every day of the week, including Sundays, cashed Bureau of Indian Affairs general assistance checks and accepted the proceeds of those checks in return for liquor, all in violation of tribal law.

Significantly, the tribe's War on Alcohol Abuse has had initial success. For example, one expert testified that the tribe's efforts, including operation of Drug Abuse Resistance Education (D.A.R.E.) program by the tribal police in junior high schools, contributed to a 30% reduction in students at-risk for drug and alcohol abuse on the reservation between 1985 and 1989. Based on this record, the Tribal Court held that the licensing and regulation of liquor establishments were essential to address the problems of alcohol abuse on the Reservation, and ordered the defendants to come into compliance with tribal laws or cease doing business. Cheyenne River Sioux Tribe v. Isabel, et al., 18 Indian L. Rep. 6079 (Chey. R. Sx. Sup. Ct. 1990), affirmed, 19 Indian L. Rep. 6097 (Chey. R. Sx. Ct. App. 1992).<sup>5</sup>

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<sup>5</sup> In June 1992, the defendants sued the Tribe in federal district court alleging that the Tribe had no authority over non-Indian liquor dealers in because they claimed to be in non-Indian

In furtherance of the Tribe's War on Alcohol Abuse, the Tribal Council amended its alcoholic beverage control ordinance to strengthen regulations directed against unacceptable drinking practices. As amended, the ordinance declares the policy of the Cheyenne River Sioux Tribe:

"(A) To minimize alcohol consumption among residents of the Reservation;

(B) To discourage unsafe drinking practices, including, but not limited to, driving while intoxicated, alcoholism or chronic intoxication, violence related to alcohol abuse, public intoxication and drinking during pregnancy;

(C) To minimize the adverse health effects of drinking alcohol through prevention, regulation and treatment;

(D) To protect unborn children, who are people in their own right, from prenatal alcohol damage;

(E) To control the supply of alcoholic beverages through taxation and regulation, and to control conditions of availability of alcoholic beverages through education and

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communities on the Reservation. Despite approval of the Tribe's liquor ordinance by the Secretary of Interior, the district court temporarily enjoined enforcement the ordinance in the Cities of Dupree (population 500), Isabel (pop. 350), and Timber Lake (pop. 700). The Tribe has appealed that decision to the federal Eighth Circuit Court of Appeals, and argument on the case will be heard in May, 1993. City of Timber Lake v. Cheyenne River Sioux Tribe, Appeal Pending No. 93-1148SDRC (8th Cir.).

The Tribe, however, unquestionably has authority over liquor sales in the City of Eagle Butte (pop. 3,000), the largest city on the Cheyenne River Reservation, and the Tribe does enforce its ordinance there. Of course, the Tribe also enforces tribal laws in the unincorporated Indian villages on the Reservation. See Reservation Map.

regulation;

(F) To maximize education, prevention and treatment programs to fight alcohol abuse; and

(G) To cause those who sell or consume alcoholic beverages to bear a greater proportion of the costs associated with alcohol abuse through taxation of alcoholic beverages and alcoholic beverage dealers and dedicating revenue derived therefrom for alcohol abuse education, enforcement, prevention, regulation and treatment." Cheyenne River Sioux Tribe of South Dakota's Liquor Ordinance, 57 Fed. Reg. 12554 (May 20, 1992).

Accordingly, the Tribe enacted provisions to require alcohol server training (minimum of 8 hours), posting of signs warning of the dangers of alcohol abuse generally and by pregnant women in particular, reducing hours for the off-sale of liquor from 12:00 a.m. to 11:00 p.m. and reducing hours for on-sale of liquor from 2:00 a.m. to 1:00 a.m. Monday through Thursday, prohibiting sales on Sundays and Holidays, prohibiting sales from drive-up windows, prohibiting sales to pregnant women, instituting dram shop causes of action, and imposing retail and wholesale liquor taxes. Id.

Accordingly, the Tribal Council has through tribal law and policy made the reduction of alcohol abuse and its consequences a high priority for the Tribe.

### III. EXISTING RESERVATION PROGRAMS TO REDUCE ALCOHOL ABUSE

The Cheyenne River Sioux Tribe, the federal government, the state government, local government, private organizations, and community members recognize that alcohol abuse is the primary

health and social problem among Indians residing on the Cheyenne River Reservation. For example, the FY 1993 Amendment to the Memorandum of Agreement Between the Department of Health and Human Services and the Department of Interior states:

The IHS and the BIA recognize alcohol and substance abuse as a disease which is both preventable and treatable. The IHS and the BIA recognize chemical dependency as the most serious health and social problems affecting American Indian and Alaska Native people.

Id. at 2; see 25 U.S.C. sec. 2401 et seq. (the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 sets forth the Congress's findings along to the same effect). In regard to the Cheyenne River Sioux Reservation, the Mayor of Eagle Butte described the problem of alcohol abuse as "astronomical." See Letters of Support.

Accordingly, there are numerous federal, tribal, and local programs aimed at reducing alcohol abuse. The Dept. of HHS & Dept. Interior Memorandum of Agreement states:

The BIA and the IHS have multiple programs which already respond to the consequences of alcohol and substance abuse (i.e., education, social services, judicial services, law enforcement, mental health, acute and chronic medical care services, etc.), and prevention and treatment programs for alcohol and substance abuse. However, there is a continuing need . . . to promote the efficient and effective use of resources and programs within the organization as well as between organizations.

Id. The Tribe also operates a number of programs aimed at reducing alcohol abuse in partnership with the IHS and the BIA and local community organizations, i.e., the tribal alcohol and substance abuse program, the tribal mental health program, the



tribal police department and tribal jail, the tribal civil and criminal court system, the tribal cultural center, the tribal legal department, the tribal education system, and programs such as the stepping stones program for youth in conjunction with the Sacred Heart Center. Some of the alcohol abuse prevention and/or reduction programs are discussed below in detail.

#### A. Reservation Health Programs to Reduce Alcohol Abuse

The Cheyenne River Reservation health system is the product of a cooperative effort by the federal and tribal governments to promote health care and provide medical treatment for the Indian residents of the Reservation. The Reservation health care system is very much involved in efforts to reduce alcohol abuse.

The Tribal Alcohol and Drug Prevention Program provides community alcohol abuse prevention education and out-patient counselling. For example, the Alcohol Program has conducted seminars for the Indian Child Welfare Program and Reservation Shelter Homes entitled, "How to Deal with Children from a Chemically Abusing Home," "Substance Abuse and its Relation to Violence," and sponsors bi-monthly workshops on alcohol abuse prevention and treatment on a rotating basis throughout the Reservation communities. The Alcohol Program has also helped initiate self-help groups, such as "Women Who Love Too Much."

The Alcohol Program has 5 out-patient alcohol counselors for the entire reservation, and evaluates clients for referral to in-patient counselling. The alcohol program counselling services are supplemented by the Cheyenne River Counselling Service, which

employs a full-time psychologist. Last fiscal year, the programs had 3,835 client contacts.

The Tribal Mental Health Program provides similar service for many clients who have a dual diagnosis of alcohol abuse and mental health problems. Additionally, the B.I.A. Agency Social Services provides counselling and outreach services to welfare clients suffering from alcohol abuse.

Recently, the Tribal Police Department has entered into a new partnership with the Indian Health Service medical staff. As the Department's Administrative Officer explained:

In 1993, the Cheyenne River Sioux Tribe will enter into a new era, upon the completion of a new detention center. This center will include both adult and juvenile detention facilities, as well as a Social Detox unit. The Social Detox unit has been designed to serve as a pre-treatment program for alcohol-related offenders.

See Letters of Support. The Social Detox Unit will be staffed by IHS medical personnel.

#### B. Reservation Education Programs to Reduce Alcohol Abuse

The Cheyenne River Reservation educational system is the product of a cooperative effort by the federal, tribal and state governments, and makes strong efforts to engender parental and community involvement. The Reservation education system is very much involved in efforts to reduce alcohol abuse.

For example, Ms. Renee Fasthorse, K-6 Substance Abuse Counselor at the Cheyenne -- Eagle Butte Primary School, reports that the local Board of Education, which is a joint tribal-state institution, has developed a drug and alcohol abuse curriculum in

conjunction with community members,<sup>6</sup> and the curriculum committee explains:

The drug and alcohol curriculum is part of a total health curriculum which is presently in the process of development. Other topics in the curriculum include growth and development, personal health, nutrition, family life and health, disease prevention and control, Aids, human sexuality, safety education, and first aid and community health.

See Appendix, Drug and Alcohol Curriculum.

The general goal of the drug and alcohol curriculum is to educate the students to make responsible decisions about drugs and alcohol:

The student will be aware of drugs and alcohol and their effects, and will be aware of responsible decision making as it relates to the prevention of alcohol and drug misuse and abuse, and will understand ways to develop coping skills in various situations including those in which drugs and alcohol are used in the family.

It is felt that drug and alcohol education must occur as part of the overall educational program of the school and must be part of the curriculum in every classroom. It is also felt that drug and alcohol education must be part of an on-going process to include parents and the community in the process.

Drug and Alcohol Curriculum. The drug and alcohol curriculum includes: "traditional Native American views toward alcohol and traditional approaches to dealing with prevention and recovery."

Id.

In addition to this educational function, the Reservation

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<sup>6</sup> Ms. Fasthorse also provides individual and group counselling for the students in grades K-6, prevention and education by classroom presentations and supporting youth involvement with sobriety events, and in-service training for teachers. Appendix, Letter of Renee Fasthorse.

school system has also assisted in forming student groups to fight alcohol abuse, including:

1. Just Say No;
2. BADD (Braves against Drunk Driving);
3. SADD (Students against Drunk Driving);
4. Ala-teen; and
5. Goodwill Ambassadors.

Id. These groups have been effective in organizing alcohol-free recreational activities, such as their alcohol-free prom, dances, and pow-wows, and annually sponsor an alcohol awareness week.

Indeed, it was student groups, including both Indian and non-Indian students, and elderly tribal members, that petitioned the Tribal Council to begin the enforcement action against liquor dealers on the Reservation, which later developed into an effort to make alcoholic beverage control regulation stricter to reduce problem drinking behaviors. March 17, 1988 Rapid City Journal, "Indian tribe waging war on alcohol, drugs" ("These young people -- with a helpful hand from the tribal council -- have prevented two new 3.2 bars from opening in their town"), attached to the PATCH Report.

In addition, through the Drug Free Schools and Communities Act of 1986, the BIA funds counselling services for students. Mr. Monty Granados, the Cheyenne -- Eagle Butte Junior High & High School Drug Free School Counsellor described his duties as follows:

I currently serve approximately 500 students in the Cheyenne Eagle Butte School as a Substance Abuse

Counselling Specialist. . . . I conduct group and individual counselling with the students. I have peer support/conflict resolution, and after care groups in both Jr. High and High School. I have a group in the dormitories. . . . I go into the teacher's classrooms once a month for drug/alcohol education. . . . I do assessments for drug/alcohol abuse. I have close contact with treatment centers on our referrals.

I've been working with the community "Honoring of the Youth" Wacipi [Pow-wow] Committee each year and it is currently in its fourth year. I also work and am on the Board of Directors for the "Lakota Youth Camp Courage" in the Black Hills. The Honoring of the Youth and Lakota Youth Camp Courage both are culturally orientated, and with a drug/alcohol prevention and education emphasis. . . .

I have speakers from the community coming into the classroom as role models that have come from dysfunctional homes and are now doing good for themselves.

Appendix, Statement of Monty Granados. Id. The other schools on the Reservation operate similar programs.

The Tribal Police Department also conduct an alcohol abuse education program in the Reservation schools: D.A.R.E. (Drug Abuse Resistance Education). As the Administrative Officer of the Police Department explained:

The DARE program is instructed by Police Officers . . . [and] includes lessons on rights, responsibilities, peer pressure, self-esteem, stress, media influences, and the effects of alcohol. DARE is taught throughout the school year to all 6th grade classes, with a Culmination (graduation) Ceremony held at the end of the program. Special recognition is given to those participants. During school vacation periods, DARE officers coordinate various activities, to continue steering them in the right direction, i.e., little league baseball, trail rides, etc., to strengthen the rapport with all youth on the reservation.

By having the privileged opportunity in becoming a DARE Instructor, I've experienced the effectiveness of the program, which has proven to reduce the amount of calls for alcohol related incidents relating to juveniles.

See Letters of Support.

#### C. Reservation Cultural Activities to Reduce Alcohol Abuse

The Cheyenne River Sioux Tribe has established the tribal Cultural Center to promote and preserve Lakota language, culture and tradition. Mr. Trini Bird Necklace, the Acting Director of the Cultural Center, explained the relation of those activities to efforts to reduce alcohol abuse:

The Cheyenne River Sioux Tribe's Cultural Center is dedicated to promoting and preserving the culture, ceremonies, language, and traditions of the Lakota people. We regularly conduct ceremonies, such as the "Wiping of the Tears," ceremony, which is intended to help our Indian people overcome their grief at the loss of family members (often through alcohol related causes). Periodically, the Cultural Center hosts wacipis (pow-wows), which provides alcohol-free recreation while promoting our culture. For youngsters, we host the Oyate Cikala Dance Club every Tuesday night, instilling knowledge and pride in our cultural traditions, giving the youngsters an added sense of self-worth, and teaching them how to enjoy life in an alcohol-free environment.

See Letters of Support.

In addition, voluntary groups, such as the Sobriety Support Group, sponsor recreational activities, including alcohol-free dances and pow-wows, regular sweat lodge ceremonies, sobriety retreats, and 10 K races. Many of these activities instill pride in traditional cultural, increase individual self-esteem, and so help tribal members in their efforts to achieve sobriety.

The Reservation communities hold alcohol-free events, such as the Annual Cheyenne River Fair and Rodeo in Eagle Butte, New Year's Eve Pow-wows in Cherry Creek and Red Scaffold, pot-luck church dinners, and the like. The tribal and community policy to



make these events alcohol-free has had results. For example, just after the Tribe's 1989 Annual Fair and Rodeo, the Director of the IHS wrote the Tribal Chairman, and said:

I would like to commend the leadership of the Cheyenne River Sioux Tribe for their efforts in controlling Drug and Alcohol abuse. During the 1989 Fair and Rodeo the hospital had experienced a very low weekend work load. It was felt at the time that this come from the no Drugs or Alcohol effort.

During the past Labor Day weekend . . . the hospital emergency room saw 132 patients with only 13 cases relating to alcohol. This is an extremely low incident rate for the hospital, especially when you consider the large influx of people into Eagle Butte during that time. The Medical Staff and I feel that the Tribal stand against Drugs and Alcohol and the Indian people's willingness to support that effort contributed to the success of this initiative.

Your continued efforts will reduce the deaths, injuries and diseases associated with Drugs and Alcohol abuse. I hope the Cheyenne River Sioux Tribe shares this success with other Tribal governments so all Indian people can benefit by following your example.

Letter of Terry Pourier, IHS, to Wayne Ducheneaux, CRST.

#### IV. RECENT ALCOHOL ABUSE PREVENTION PLANNING AND THIS GRANT

In 1985, the Cheyenne River Sioux Tribe in conjunction with the Indian Health Service, the Center for Disease Control, and the South Dakota Department of Health, undertook the Planned Approach to Community Health (PATCH) Study:

Mortality, community opinion and prevalence data has been collected. Findings were analyzed to determine: 1) the risk factors which affect the health of the Tribe's residents, and 2) the perceived and actual needs of the community, 3) interventions to recommend to the Tribal Council.

As explained above, much of the data utilized in this Healthy Nations Grant application was drawn from the PATCH Report, and

after the community and health professionals identified alcohol abuse as the primary reservation health problem, the Tribal Council declared War on Alcohol Abuse. Thus, the PATCH Report is viewed as a successful initiative by the tribal community.

The Tribe has attempted to follow up on the PATCH Report. For example, in 1992 the Tribal Health Department applied for an IHS research grant to study family function and dysfunction among tribal members, but the application was not funded.

The Healthy Nations Grant application process itself has been a positive experience. In meetings sponsored by the Tribe, tribal program directors met with IHS, BIA, and local officials to develop the information and approach adopted in this grant proposal. The experience showed that the tribal employees are rightfully proud to be engaged in very innovative strategies to prevent and treat with alcohol abuse, such as:

- 1) development of a model law enforcement complex, which incorporates alcohol treatment into a detention facility;
- 2) innovative tribal regulation of alcoholic beverages to reduce problem drinking behaviors, such as drinking and driving, binge drinking, drinking while pregnant, etc.;
- 3) development of drug and alcohol abuse curriculum for elementary and secondary educational institutions; and
- 4) the use of Indian culture to provide alternatives to alcohol abuse and to assist those seeking sobriety.

The experience also demonstrated significant problems in the existing system of programs.

Perhaps the number one problem in the Cheyenne River Sioux Tribe's alcohol abuse education, prevention and treatment effort

is fragmentation of responsibility. Everyone deals with a small piece of the pie, but no one has enough time or energy left over to provide the cohesive leadership necessary for a comprehensive assault on alcohol abuse.

In other words, the Healthy Nations Program Director at Cheyenne River, in Phase I, could do exactly what he is intended to do: enhance existing resources through coordination, leading to an efficient allocation responsibility and an effective use of time and energy.

At the same time, the data collection and planning function leading to Phase II could provide models for a better coordinated alcohol abuse education and prevention effort, and additionally, bring coherence to the "crisis oriented" treatment plan presently in existence. One cannot help but pay attention to the pregnant mother who presents herself at the IHS hospital with a blood alcohol level of .370. But when she comes back from treatment and her FAE child is removed from her home who remembers her?

Thus, we come to the second major gap in existing resources: after care. Through the IHS, tribal employee health insurance, veterans coverage, etc., there is money for in-patient therapy. Through the B.I.A. and the IHS there is money for out-patient counselling, but there is no money for intermediate after care, such as halfway houses. So, we can spend \$6,000 on in-patient therapy and then two to three weeks after the end of that care, the alcohol abuser falls back into his or her earlier pattern of abuse because he or she is back in the exact same environment.

There is no chance for a successful transition. That is a wasteful allocation of resources, but the federal government often ties our hands.

By focussing our attention on these problems, the Healthy Nations Grant application process was a good experience. We hope that with the Robert Wood Johnson Foundation's help the Cheyenne River Sioux Tribe can establish a true comprehensive approach to alcohol abuse and its attendant problems, including in Phase II a pilot project for after care.

#### V. THE CHEYENNE RIVER SIOUX PROPOSAL FOR A COMPREHENSIVE APPROACH TO ALCOHOL ABUSE AND ITS ATTENDANT PROBLEMS

The Tribal Council has already taken the first step to a comprehensive alcohol abuse prevention and treatment policy by establishing a clear, specific policy against alcohol abuse and its attendant problems: The Tribe's War on Alcohol Abuse. This is a fight for our future, or expressed in a traditional Lakota way, our people care for the "seventh generation" today.<sup>7</sup>

The other components for a "comprehensive" approach to the problems of alcohol abuse, include: a) coordination of existing efforts; b) a clear alcoholic beverage control policy designed to reduce problem drinking behavior; c) public awareness/community education; d) community involvement; e) tracking problem drinking among young people; and f) a comprehensive treatment plan. The

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<sup>7</sup> The Tribe's War on Alcohol Abuse has gained attention in the local media, the Eagle Butte News, Aberdeen American News, Rapid City Journal, and Lakota Times (now Indian Country Today), and the national media, USA Today, "Alcohol Abuse Among Native Americans: Tribes fight desperation with determination" (4/8/92).

Tribe has also begun to marshall its resources to implement some of these alcohol abuse prevention and treatment activities.

A. Coordinating the War on Alcohol Abuse

The Cheyenne River Sioux Tribe has a serious problem with alcohol abuse among its members and the Tribe has made its War on Alcohol Abuse one of its highest priorities. Yet, funding for the effort comes in dribs and drabs from the federal government for highly specialized purposes, e.g., drug and alcohol-free school funding is available for only limited use in the schools. The Tribe's juvenile probation officer serves the same youths, group, yet has limited contact with the school counselors. This segregation of duties is found throughout federal, tribal, and local programs.

The Tribe envisions the Healthy Nations Program Director will serve as both a coordinator and planner in Phase I of the project. The Tribal Council will invest the Healthy Nations Program Director with authority to Chair the Cheyenne River Sioux Tribe Task Force on Alcohol Abuse Prevention. The Task Force will be comprised of directors of federal, tribal, and local programs charged with the responsibility to reduce alcohol abuse, including:

1. The Healthy Nations Program Director (Chair);
2. The Chairman of the Cheyenne River Sioux Tribe;
3. The B.I.A. Agency Superintendent (Operations);
4. The B.I.A. Agency Superintendent (Education);
5. The Clinical Director of the I.H.S. Hospital;

6. The Chairman of the Cheyenne River Sioux Alcoholic Beverage Control Commission;
7. The Cheyenne River Sioux Alcohol Abuse Prevention Program Director;
8. The Cheyenne River Chief of Police; and
9. Representatives of community organizations.

This task force will meet quarterly to review the progress of the Tribe's War on Alcohol Abuse and to review the progress of the Healthy Nations Program.

Additionally, the task force will establish working groups to address specific issues, including alcohol abuse prevention curriculum reform, community support programs, and effectiveness of existing alcohol abuse treatment efforts. Working groups will include representatives from all community sectors, our elders, clergy and spiritual leaders, recovered alcohol abusers, and the subordinates of the task force members, including drug/alcohol-free counselors, planners, alcohol abuse experts and legal staff, and they will work in concert with the Healthy Nations Program and the task force to coordinate the War on Alcohol Abuse.

Delegating to the Healthy Nations Program Director, the primary function of coordination will complement the planning function and at the same time, provide the vital link needed to make existing programs "comprehensive."

#### B. Alcoholic Beverage Control Policy

In furtherance of its War on Alcohol Abuse, the Tribe has enacted its alcoholic beverage control law, which conditions and limits availability of alcohol on the Reservation. A comparison



of state and tribal law follows:

	Tribal Alcoholic Beverage Law	State Law
Days and Hours for Off-Sale:	Mon./Thurs. 11 a.m. to 11 p.m. Fri./Sat. 11 a.m. to 12 a.m. Sunday Closed	7 a.m. to 12 a.m. Malt Liquor Only
On-Sale:	Mon./Thurs. 11 a.m. to 1 a.m. Fri./Sat. 11 a.m. to 2 a.m. Sunday Closed	7 a.m. to 2 a.m. Malt Liquor Only
Server Training:	8 hours per server mandatory prior to selling alcohol	None
Sales to Minors:	Prohibited	Prohibited
Sales to Pregnant Persons:	Prohibited (Possible mandatory treatment if danger to mother or fetus)	Permitted
Dram Shop Liability:	Yes	No
Drive-Up Windows:	Prohibited	Permitted

Thus, the Tribe has addressed some problem drinking behaviors, i.e., "binge" drinking (no Sunday sales and shorter school night hours); drinking and driving (no sales through drive-up windows), and drinking during pregnancy (prohibited) through its alcoholic beverage control law.

In addition, the Tribe is in the process of implementing its own 7 1/2% wholesale tax and 10% retail tax on alcohol beverages, which will provide long term funding for alcohol abuse prevention and treatment programs (\$100,000 anticipated annual revenue) and which will also serve to lower overall consumption of alcohol.

(As noted above, the Tribe is currently in litigation in the federal courts over the application of its licensing authority to

Timber Lake, Isabel and Dupree, and resolution of the litigation may take from 2 to 3 years. Unfortunately, that will delay this taxation effort. However, the litigation is reported in the news media and provides a "public awareness" function).

The Healthy Nations Program will design a method for analyzing the impact of the Tribe's regulatory effort, and so provide the Tribal Council with the necessary feedback to make this effort effective on an ongoing basis.

### C. Public Awareness Campaign

As demonstrated by the letters of support, our Indian people know that alcohol abuse is detrimental, indeed, devastating, to community health. We know because we have seen relatives and friends die from alcohol abuse. Accordingly, the Tribe seeks to introduce a "pro-active" public information campaign, which will provide the information needed to change abusive behavior and engender hope for the future.

The Tribe's goal for "a highly visible public awareness campaign designed to generate broad-based community support for efforts to reduce demand" is:

- 1) to accurately inform our community of the dangers of alcohol abuse with special emphasis on high risk--unacceptable drinking behaviors, i.e., binge-drinking, drunk driving, public intoxication, alcohol related violence, and drinking during pregnancy;
- 2) accurately inform those groups at high risk for alcohol abuse related injury and death, e.g., our youth and pregnant women, of the immediate dangers to their health;
- 3) inform our community of health care and support services available to assist those in need of reducing alcohol dependence;

4) inform our community of the policy initiatives that have been made in the past several years and the interim success that these on-going efforts have had; and

5) inform our community of the policy alternatives which are available to reduce alcohol abuse and related abusive behaviors.

As described above, the Tribe, the B.I.A., the IHS, and community organizations, such as the Sacred Heart Center, already engage in community awareness campaigns. Thus, the Healthy Nations Program Director will evaluate and coordinate existing efforts to provide accurate information to the public regarding the nature and scope of the problems of alcohol abuse.

For example, the D.A.R.E. program, sponsored by the Cheyenne River Sioux Tribe's Police Department, is conducted in schools throughout the reservation, and all of the B.I.A./tribal schools have drug and alcohol abuse prevention curricula being taught by teachers and alcohol-free school counselors. According to the Findings From The 1992 Adolescent Health Survey of the Eagle Butte High School, Cheyenne River Sioux Tribe "Lakota" (National Adolescent Health Resource Center of the U. of Minnesota), the percentage of students engaging in heavy, experimental or "binge" drinking in Eagle Butte High School (27% 5 or more drinks in one sitting) is lower than both the adult rate (37.1%) and the rate in other high schools on the Reservation (41%). Thus, the Health Nations Program evaluation of existing federal and tribal alcohol abuse education programs may explain this disparity in alcohol consumption patterns and assist the Tribe in reducing alcohol consumption both in Eagle Butte and other reservation schools.

Along the same lines, the Healthy Nations Program would provide resources to test existing education programs conducted by the Tribe's Alcohol Program for the reservation communities, because unlike the adolescent survey, community-wide surveys have not been conducted since the PATCH study in 1985. A counselor in the school system suggested that since school curriculum appears to be having a positive impact on alcohol abuse, the Tribe should start family-oriented classes for the community on an on-going basis. These ideas will be developed by the task force and its working groups.

#### D. Engendering Community Involvement

On the Cheyenne River Reservation, the Tribe does not have difficulty engendering community support and involvement in its efforts to reduce alcohol abuse. For example, after the Tribe declared War on Alcohol Abuse, students and tribal elders banded together to petition the Tribal Council to stop two new 3.2 bars from opening in Eagle Butte, and the Tribal Council did so.

Similarly, in Green Grass, the community requested the Tribe to declare their community an alcohol-free community. The Tribe assisted them in that effort. Community members then formed a Sobriety Support Group to assist individuals in their efforts to remain sober through alcohol-free activities, including sun dance ceremonies, annual retreats, frequent sweat lodge ceremonies, and other group activities. This group has grown to include members in Eagle Butte as well. In short, community people want to get things done.

Accordingly, with a successful public awareness campaign regarding Reservation specific information about alcohol abuse, including data concerning both high risk behaviors and high risk groups, the Tribe anticipates that community members will bring their ideas to the tribal government. The task of Health Nations Program staff will be to channel these efforts by providing the information necessary to start support groups, like the Sobriety Support Group; to organize alcohol-free activities, like the annual alcohol-free New Year's Eve Pow-wows in Cherry Creek and Red Scaffold; and to coordinate existing community efforts.

#### D. Prevention Efforts for Children and Youth

As described above, the Cheyenne River Sioux Tribe has an extensive alcohol abuse education system in place, and that is supplemented by student support organizations, such as S.A.D.D., which promote alcohol abuse prevention and alcohol-free activity. The D.A.R.E. program and the Tribe's cultural center also support alcohol-free activity, e.g., the "Honoring of the Youth Wacipi," Oyate Cikala Dance Club. These programs need to be evaluated for effectiveness, and revised in accordance with evaluations.

In addition, existing service providers need assistance in formulating an early intervention and tracking system for youths who exhibit problem behaviors related to drinking. For example, if youths come into juvenile court on charges of vandalism and possession of alcoholic beverages, the school counselors should be informed so that a subsequent incident in school is not seen as a first "offense." Moreover, if there is early identification

then these youths may be appropriately placed in individual and/or group counselling.

Accordingly, the Tribe proposes to develop three approaches to increase effective intervention:

- a) In-service training by professionals to identify the problems of alcohol abuse and appropriate remedial action, such as on-going counselling and periodic mandatory risk assessment;
- b) design of a tracking system that provides periodic follow-up on a juvenile or young adult once they have had an initial contact with authorities; and
- c) coordination between agencies charged with the duty to respond to alcohol abuse.

Coordination between agencies will begin immediately under the leadership of the Healthy Nations Program Director, and tribal, federal, and state agencies charged with responsibilities for the reduction of alcohol abuse will work with the Director in the development of alcohol abuse intervention strategies within this general framework.

#### E. Providing for A Full Spectrum of Treatment

Western medicine focusses heavily on a mechanistic view of the world: cure disease by removing or inhibiting the symptoms. The focus is on the individual rather than the community. Thus, it is not surprising that the federal government, with a western outlook, provides funds for in-patient alcohol abuse therapy and some outpatient counselling, but will not provide the funds to



address family problems and community problems.

An individual's family functioning and primary social environment greatly influence the development of personality, self-esteem, values, beliefs, health behaviors, and consequential emotional and physical health. Higher levels of family functioning and a positive psychosocial environment will lead to better emotional and physical health. Recovery from alcohol abuse requires validation of events, a supportive family life, and supportive social systems.

Because there is little family involvement in the in-patient therapy and individualized outpatient therapy currently provided by tribal and federal governments, recovery from alcohol abuse is made difficult if not impossible. Therefore, the Cheyenne River Sioux Tribe intends to use the Healthy Nations Phase I planning process will to develop a pilot project to fund the missing link: family and community oriented after care. The Healthy Nations Director will work cooperatively with the Alcohol Program and Tribal Counselling Service to develop the plan's for a pilot halfway house project, and family and community oriented after care therapy.

The Health Nations pilot project will include traditional philosophy and approaches to healing, including the traditional cleansing of mind and body in the sweat lodge. The traditional philosophy puts great emphasis on the connections between all things, including both the spiritual, the living and those "of the earth." This belief is perhaps best captured in the Lakota

prayer, "Mitakuye Oyasin," meaning "all my relatives" -- taking in all things within the sacred circle of being.

**Timeline -- Phase I, the Healthy Nations Program:**

**30 days:**

**Coordination:** convene the 1st meeting of the Cheyenne River Sioux Tribe Task Force on Alcohol Abuse Prevention and Treatment, inform the task force and the public about the program goals and efforts, and develop a mission statement and organizational documents for the task force; issue a press release;

**Alcoholic Beverage Control Policy:** compile and review model alcoholic beverage control laws, ordinances and regulations, including both state and tribal laws;

**Public Awareness:** catalogue and begin evaluation of Tribe's existing public awareness/community alcohol abuse education programs;

**Community Involvement:** catalogue and begin evaluation of Reservation's existing community support/alcohol abuse prevention organizations;

**Prevention Efforts for Children and Youth:** collect material on in-service training, early intervention and juvenile "tracking" systems; consult with tribal legal department concerning Privacy Act;

**Treatment:** gather information on full spectrum of treatment for alcohol abuse;

**3 Months:**

**Coordination:** convene 1st quarterly meeting of Task Force; develop a plan for working groups on specific issues, such as alcohol abuse prevention curriculum development, treatment evaluation, etc., and begin monthly meetings for working groups.

**Alcoholic Beverage Control Policy:** develop working group on alcoholic beverage control policy, including member of alcoholic beverage control commission, revenue department, responsible reservation liquor dealer, IHS medical staff member, and tribal attorney;

**Public Awareness:** develop working group on public awareness to include: C.R.C. College Board Member; D.A.R.E. officer, Drug and Alcohol-Free School Counselor; traditional elder, and student representative.

**Community Involvement:** facilitate a reservation meeting of community support/alcohol abuse prevention groups to share common concerns and common goals; develop community involvement working group from among those in attendance;

**Prevention Efforts for Children and Youth:** develop working group to study prevention efforts for children and youth, including drug and alcohol-free school counselor, juvenile police officer, juvenile probation officer, social service worker, student representative, and parent representative;

**Treatment:** gather information on family-oriented, community based treatment;

6 Months:

**Coordination:** convene 2nd quarterly meeting of Task Force, review progress of working groups, and make recommendations to further working group agendas; invite experts on alcohol abuse prevention education to make presentation to the Task Force and invite public awareness working group;

**Alcoholic Beverage Control Policy:** assist working group in developing model regulations for operations of alcoholic beverage control commission;

**Public Awareness:** develop surveys to evaluate existing public awareness/community alcohol abuse education/school alcohol abuse education programs, and efficacy in imparting information about alcohol abuse generally, high risk alcohol behaviors, and alcohol policy to the public and to high risk groups;

**Community Involvement:** develop a directory of existing community resource/alcohol abuse prevention organizations;

**Prevention Efforts for Children and Youth:** Review in-service training and existing inter-agency referrals;

**Treatment:** gather information on traditional Lakota treatment for alcohol abuse.

#### 9 Months:

**Coordination:** convene 3rd quarterly meeting of Task Force, review progress of working groups, and make recommendations to further working group agendas; invite experts on alcohol beverage control policy to make presentation to the Task Force and invite alcoholic beverage control policy working

group;

**Alcoholic Beverage Control Policy:** assist working group in finalizing model regulations for operations of alcoholic beverage control commission, and submit proposed regulations to alcoholic beverage control commission for review, amendment and/or adoption;

**Community Involvement:** print and disseminate a directory of community resource organizations;

**Treatment:** sponsor a meeting for western medical staff and traditional healers and discuss a full spectrum of treatment for alcohol abuse;

#### 12 Months:

**Coordination:** convene 4th quarterly meeting of Task Force, review progress of working groups, and make recommendations to further working group agendas; invite experts on alcohol abuse and the role of the community to make presentation to the Task Force and invite community involvement working group;

**Alcoholic Beverage Control Policy:** develop methodology for evaluating the effectiveness of existing alcoholic beverage control laws and regulations; begin to assist with draft of Healthy Nations Phase II application;

**Public Awareness:** conduct surveys to evaluate existing public awareness/community alcohol abuse education/school alcohol abuse education programs;

**Community Involvement:** develop a guide to organizing new

community support/alcohol abuse prevention organizations;

**Prevention Efforts for Children and Youth:** Make recommendations to upgrade in-service training and existing inter-agency referral system;

**Treatment:** draft a proposal to fill the "after care" gap in treatment and submit the proposal;

#### 15 Months:

**Coordination:** convene 5th quarterly meeting of Task Force, review progress of working groups, and make recommendations to further working group agendas; invite experts on alcohol abuse treatment to make presentation to the Task Force;

**Alcoholic Beverage Control Policy:** finalize methodology for evaluating the effectiveness of existing alcoholic beverage control laws and regulations; prepare the information for Healthy Nations Phase II and continue drafting the Healthy Nations Phase II application;

**Public Awareness:** compile survey results in regard to evaluation of existing public awareness/community alcohol abuse education/school alcohol abuse education programs; prepare information for Healthy Nations Phase II; begin to assist with draft of Healthy Nations Phase II application;

**Community Involvement:** facilitate reservation meeting of community support/alcohol abuse prevention organizations; discuss progress over the past year and discuss drafting process for Healthy Nations Phase II application and begin drafting; gather input;



**Prevention Efforts for Children and Youth:** share recommendations to upgrade in-service training and existing inter-agency referral system with others in the system, school administrators, juvenile justice system personnel, law enforcement personnel, community leaders, parents, and students;

**Treatment:** submit draft "after care" treatment proposal to other medical professionals, the task force, working groups and the reservation community for comment;

**18 Months:**

**Coordination:** convene 5th quarterly meeting of Task Force, review progress of working groups, and make recommendations to further working group agendas; invite experts on alcohol abuse identification and intervention to make presentation to the Task Force and invite prevention working group;

**Alcoholic Beverage Control Policy:** finalize methodology for evaluating the effectiveness of existing alcoholic beverage control laws and regulations; prepare the information for Healthy Nations Phase II and continue drafting the Healthy Nations Phase II application;

**Public Awareness:** Assist in coordinating community meetings to discuss results of evaluations of existing programs and the Healthy Nations Phase II application, and gather input from the community meetings; prepare information for Healthy Nations Phase II and continue drafting the Healthy Nations Phase II application;

**Community Involvement:** survey communities regarding the utilization and perceived effectiveness of the community support/alcohol abuse prevention organizations; print and disseminate the guide to establishing new community resource organizations;

**Prevention Efforts for Children and Youth:** review responses from other agencies and concerned groups to recommendations for improvement and revise recommendation as appropriate; prepare information for Healthy Nations Phase II application and begin drafting application;

**Treatment:** review comments and revise draft accordingly.

#### 21 Months:

**Coordination:** Task force review of working groups drafts of Healthy Nations Phase II application, and recommendations to Healthy nations Program Director.

**Alcoholic Beverage Control Policy:** begin implementation of methodology for evaluating the effectiveness of existing alcoholic beverage control laws and regulations; finalize draft of Healthy Nations Phase II application;

**Public Awareness:** review community input regarding existing public awareness/community alcohol abuse education/school alcohol abuse education programs; finalize draft of Healthy Nations Phase II application;

**Community Involvement:** review survey information regarding the utilization and perceived effectiveness of community support/alcohol abuse prevention organizations; finalize

draft of Healthy Nations Phase II application;

Prevention Efforts for Children and Youth: submit finalized recommendations; finalize draft of Healthy Nations Phase II application;

Treatment: finalize draft after care proposal.

#### 24 Months:

Coordination: Task force approval of Healthy Nations Phase II application.

Alcoholic Beverage Control Policy: continue implementation of methodology for evaluating the effectiveness of existing alcoholic beverage control laws and regulations.

Public Awareness: make recommendations for improving the existing public awareness/community alcohol abuse education/school alcohol abuse education programs in accordance with survey results and community input.

#### VI. OTHER RESOURCES

The Tribe is requesting \$150,000 for Phase I of the Healthy Nations Program for two years. The Tribe expects the Director of the Healthy Nations program will act as a coordinator of existing services, data gatherer, and planner. Accordingly, most of the funding will be for the Director's salary. The Tribe contributes \$12,540 for office space, supplies, etc.

#### VII. FUTURE FUNDING

At the present time, the Tribe is in the midst of litigation concerning its licensing of alcoholic beverage dealers throughout the Reservation. Because the Supreme Court has recognized that

Congress has delegated concurrent authority to States and Indian tribes to regulate alcoholic beverages in Indian country, Rice v. Rehner, 463 U.S. 713, 715 & n. 1 (1983), the Tribe believes that it will prevail (though it may take two to three years to weave its way through the federal court system). Once this precedent has been established, the Tribe will implement its wholesale and retail alcoholic beverage taxes, which have been approved by the Secretary of the Interior. (In the alternative, the Tribe might accept 70% of the State's current alcoholic beverage taxes in lieu of imposing a separate tax of its own). The Tribe expects that these taxes will produce approximately \$100,000 in revenue annually, and the Tribe has already earmarked these for alcohol abuse prevention and treatment.

As a secondary source of funding, the Tribe would lobby Congress for an add-on to the tribal budget. With a showing that the Healthy Nations Program had produced results, the Tribe would be able to make a strong case for an additional appropriation to keep the project going. (The Tribe was successful in similar with the new model tribal detention facility and tribal game, fish & parks program in the past).

#### VIII. PROPOSED DIRECTOR AND STAFF

The proposed Director of the Healthy Nations program in phase I is Dr. Dewey Ertz, a copy of his resume is attached. He will be assisted by a part-time secretary as yet unidentified.

## RESUME

BIOGRAPHICAL SKETCH

Name: Dewey J. Ertz

Birthdate: October 13, 1950

Soc. Sec. No: 504-64-7437

Birthplace: Burke, South Dakota

Nationality: American Indian

Marital Status: Married

EDUCATION

1. Schools Attended	Dates Attended	Degree Received/Date
So. State Teachers College	Jun '68 to Dec '69	None
University of So. Dak.	Jan '70 to Aug '72	B.S. 8/72
University of So. Dak.	Sep '72 to May '73	M.A. 5/73
University of So. Dak.	Jun '76 to Jul '77	Ed.D. 7/31/77

Dissertation: "An Investigation of Correlated Reinforcement Among College Students," Major Professor, John F. Bryde, Ph.D.

2. Postdoctoral Study - January 13-15, 1978; "An Introductory Workshop on Hypoanalysis," The Menninger Foundation, Erika Fromm, Ph.D., Workshop leader. July 3-7, 1978; "An Introductory Workshop on Clinical Human Neuropsychology," Snowmass, Colorado, Ralph Reitan, Ph.D., Workshop leader. Summer, 1979; "PSYC 792, Directed Readings in Neuropsychology," University of South Dakota - Under the direction of Dr. Tom Jackson. September 21 to 25, 1981; Training in the Luria-Nebraska Neuropsychological Test Battery, Nebraska Psychiatric Institute, Omaha, NE., directed by Dr. Charles Golden. Follow-up training was completed January 11 to 15, 1982. September 8, 1984; "Child Sexual Abuse...Whose Problem is it?", Sioux Falls, SD, Richard Krugman, MD, Workshop leader. September 10 to 13, 1989; The Healing Journey: A Return to the Circle, First Annual National Conference of the National Association for Native American Children of Alcoholics, Missoula, MT. June 25 to 26, 1990; The Third Annual Convention of American Indian Psychologists, Utah State University, Logan, UT. November 8, 1992; The Fourth Annual Convention of American Indian Psychologists, University of Wisconsin, Madison, WI. March 24, 25 & 26, 1992; Men's Issues in Therapy, Black Hills Training Center, Rapid City, SD.

ORGANIZATIONAL MEMBERSHIP

1. American Psychological Association; and membership in Division 40, Clinical Neuropsychology, and in Division 16, School Psychology.
2. South Dakota Psychological Association.
3. The Society for Clinical and Experimental Hypnosis, Inc.
4. International Society of Hypnosis.
5. Council for Exceptional Children, State President, 1979/80, membership in the Council of Administrators of Special Education.

LICENSE/CERTIFICATION DATA

Certified School Psychologist, South Dakota Department of Education and Cultural Affairs, #29,664.

Licensed Psychologist, South Dakota State Board of Examiners of Psychologists, #123.

PROFESSIONAL EMPLOYMENT AND EXPERIENCE

1. Cheyenne River Sioux Tribe  
Counseling Services  
P.O. Box 590  
Eagle Butte, SD

Psychologist, July 1992 to Present.

My current duties include supervising the Counseling Services' staff and administrative tasks (10%), consultation at the U.S.P.H.S. Hospital in Eagle Butte, SD as a medical staff member (20%), diagnostic assessment (10%), and the provision of therapy (60%). Four major areas of clinical services have been identified as requiring further development. They are an inpatient assessment and follow-up partial care program within the hospital setting, further follow-up and treatment of patients attempting to harm themselves, an awareness workshop and impact study of fetal alcohol syndrome/fetal alcohol effects, and a prevention program from pre-conception to age eight for parents, infants and children. Daily consultation is held with a Pediatrician at Eagle Butte and Psychiatric personnel at Rapid City, SD. Emergency services and commitment assessments are also provided on a routine basis.

The programming being offered is based on a comprehensive programming model that has been designed to addresses the needs of Native children and adults because of psychological trauma. This model includes a behavioral management component that bases intervention on antecedents and a socialization milieu based on social interactions of staff members towards each other. A personal adjustment segment is used as a primary therapy component based on integration of several therapy models and cognition is addressed as a method of supporting changes in emotional functioning. Further research and follow-up needs to be committed to this model, both as a therapy process and as a management structure for agencies functioning in dysfunctional environments.

2. St. Joseph's Indian School  
P.O. Box 89  
Chamberlain, SD

Psychologist, July 1985 to June 1992.

The position of Psychologist was established at St. Joseph's with my employment. The first year my functioning was conducting evaluations or diagnostic work (30%) or conducting individual and/or group therapy (70%). With the beginning of the second year of employment, my duties included supervising the Social Service personnel at St. Joseph's and other administrative responsibilities including coordination and development of service plans and individual educational programs for specific students (20%); as well as diagnostic assessment (20%), and the provision of therapy (60%).

The department and my position was deleted from the organizational structure in the spring of 1992. A comprehensive programming model was designed while in this position that began to address the needs of Native Children of Trauma. This model was developed in addition to my position as a Psychologist and it represents a combined systems approach and a training process.

3. Mid-Central Multi-Service Cooperative  
20 East 4th Street  
Piette, SD

Resume-Page 2

April 13, 1992

Dawey, J. Fritz, Ed. D



Psychologist/Director, August 1977 to June 1985.

As the Psychologist/Director, my duties involved diagnostic assessment (50%), psychological treatment (10%), coordination of Special Education placements (10%), supervision of Cooperative personnel (10%), and the overall administration of the Cooperative program (20%). In-service programming was also a duty, and this was accomplished through teaching of workshops and courses at the graduate and undergraduate levels during evenings and/or weekends. My activities were monitored monthly by a Governing Committee, and services were provided to ten different school districts, with a combined enrollment of over 3,000 K-12 students.

The position required an extensive knowledge of the entire scope and sequence of the regular curriculum program of each school, and of the methodology involved in either modifying regular curriculum to meet the needs of exceptional students or developing additional curriculum to meet their needs. Considerable effort needed to be invested in future program planning over a five to ten year span, based upon projected funding levels and the expected student needs. A computer word processing and retrieval system was initiated which allowed for efficient processing of records involving all the students placed in special services in each member school, and the overall program had reached a full service level. Leadership was provided to all Cooperative employees, the special education staff of each school, the administrative personnel of each school, and the regular staff members of the schools.

4. Wall Street Mission, Goodwill Industries  
3100 West 4th Street  
Sioux City, Iowa

Director of Rehabilitation Services, June 1975 to August, 1976

As the Director of Rehabilitation Services, it was my responsibility to supervise client entry (25%), the monitoring of individual rehabilitation programs (50%), the management of a fifty-eight bed dormitory (10%), and the management of the food services program (10%). Interpretation of reports provided by referral personnel was also required, as well as the establishment of the program's offerings for clients and parental consultation (5%). Staff training and other in-service needs were an additional duty, and the program was readied for an application for accreditation by CARF, Commission on Accreditation of Rehabilitation Facilities.

The two main requirements of the position were to provide leadership and guidance to a large and diverse staff, and to coordinate and balance relationships between the program and several referral sources in a three state area. It was a difficult decision to leave this position and return to the University of South Dakota in order to complete my doctoral work. The decision to leave was made based upon my desire to return to my native state, and because it was felt that completion of the degree would provide the necessary educational background for me to be employed in South Dakota.

5. American Indian Council on Problem Drinking and Drug Addiction, Inc.  
Sioux City, Iowa

Executive Director, February, 1974 to May, 1975.

The duties of this position were changed several times during my employment, and my position title also underwent several changes. The program was designed to offer detoxification, individual and family treatment, and related services to American Indian and other poverty level counseling (both individual and group) assessment, and staff coordination. The program was closed by the State of Iowa about a year after my leaving. This position required preparation of grants, interaction with federal HEW regional and central offices, and considerable public relations efforts.

#### CONSULTIVE ACTIVITIES:

Since my initial professional work in the Sioux City, IA area, several consultive activities have also been

pursued. They have included management consultation to work activity programs for handicapped youth and adults, consultation to various law enforcement, penal and judicial institutions including the Sioux City Police Department, The Swiftbird project (a minimum security complex for American Indian offenders), and Tribal, State and Federal courts. These activities have entailed staff training, assessments of individuals, expert testimony in both civil and criminal matters, and therapy to specific patients. In addition, evaluations are/have been completed for other school systems and agencies such as Disability Determination Services. Private therapy patients are seen on a limited basis.

COURSES AND WORKSHOPS PRESENTED: Appointments have been granted from several colleges and universities in the State of South Dakota, including Black Hills State College (BHSC), Northern State College (NSC), the University of South Dakota (USD), and South Dakota State University (SDSU). A list of the courses taught to date is presented below.

Several workshops on developing Special Education I.E.P.'s, eight to sixteen contact hours.

ADAS 116 Concepts of Alcoholism, USD, three credit hours.

ADAS 117 Introduction to Drugs, USD, three credit hours.

ADAS 120 Alcohol and Drug Abuse Helping Skills, USD, three credit hours.

ADAS 216/ALHS 601 Helping Families of Alcohol and Drug Abusers, USD, three credit hours.

ADAS 222 Alcohol and Drug Abuse Among American Indians, USD, three credit hours.

ADAS 315/ALHS 601 Treatment of Alcohol and Drug Abuse, USD, three credit hours.

BAD/ECON 320 Statistics, NSC, three credit hours.

CGPS 791 Problems, Personality Assessment, NSC, three credit hours.

EPSY 523/623 Adolescent Psychology, SDSU, three credit hours.

EPSY 740 Advanced Educational Psychology, SDSU, three credit hours.

EDER 761 Intro. to Grad. Studies and Research, SDSU, three credit hours.

PSYC 493 Introduction to Native American Children of Trauma, one credit hour.

SOC 493 Child Abuse, three credit hours.

SPED 312/661 Problems, Curriculum for the Gifted, BHSC, three credit hours.

SPED 312/661 Problems, Education and Treatment of Behavior Problems, BHSC, three credit hours, also offered through SDSU as EdFn 590/690.

SPED 312/661 Problems, LD Certification from Neuropsych. Asses., BHSC, three credit hours.

SPED 312/661 Problems, Least Restrictive Environment, BHSC, three credit hours.

SPED 481/681 Workshop in Learning Disabilities, USD, three credit hours.

#### PUBLICATIONS

Ertz, D.J. (1983) Theory and treatment of learning disabilities from a neuropsychological model. In Thomas J. Reifschneider, Robert S. Ristow, and Gary Steinley, (Eds.). *The Human Brain: Cognition in Education* (Report of the Second Annual Conference), Brookings, SD: South Dakota State University.

Ertz, D.J. (1984) WISC-R profile results of Sioux Indian and non-Indian students displaying learning impairments. Unpublished Manuscript.

# ABERDEEN AREA

## Tribal Chairmen's Health Board Meeting January 29-30, 1992

### Service Unit Percentile Ratings of Mortality Rates



Office of Planning, Evaluation, and Legislation

#### INTRODUCTION

Each of the sections that follow contain Service Unit statistics that will be presented at Service Unit Governing Body Reviews. It is our intention to involve the Office of Planning, Evaluation, and Legislation in the AAHS Governing Body/Service Unit Review process because of its importance as an administrative function in the Area. Therefore, we have elected to provide mortality rate percentile ranks for each Service Unit of interest relative to other Area Service Units.

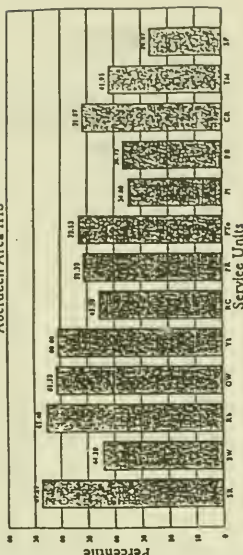
Also, for each specific mortality rate, the Service Unit's position is provided relative to the average (mean) and standard deviations from the average (mean) of all Service Unit rates. The standard deviation is a useful measure in that it allows us to view variation of the distribution of Service Unit mortality rates relative to a natural unit of dispersion.

Percentile ranks provide us an awareness of the degree each Service Unit's contribution to Area mortality rates and, as such, we enlarge the scope of problem indicators and provide a useful tool for Area decision makers. Knowing the value of a mortality rate provides very little information in and of itself. However, if we were told that a Service Unit mortality rate exceeds those of 95 percent of the Service Units in the Area, we would be able to place that rate in a useful perspective. Since a standard deviation and a percentile rank both provide a frame of reference that is crucial to interpreting the significance of numerical information, we have chosen to use those descriptive statistics for the purpose of Governing Body and Service Unit Reviews.

*Note: All of the mortality rates utilized are Age-adjusted and are derived from the AAHS "Mortality Charts September 1991" Book.*

Office of Planning, Evaluation, and Legislation.

# SERVICE UNIT Aberdeen Area IHS



Average (mean) of 15 mortality rate percentile ranking.

## Abbreviations Defined

SR	Standing Rock	FTo	Fort Totten
SW	Sisseton-Wahpeton	PI	Pierre
Rb	Rosebud	FB	Fort Berthold
OW	Omaha-Winnebago	CR	Cheyenne River
Yk	Yankton	TM	Turtle Mountain
RC	Rapid City	SF	Sac and Fox
PR	Pine Ridge		

The above graph provides a Service Unit comparison of the average (mean) of the percentile rankings for fifteen (15) mortality rate categories utilized in the following pages.

The graph indicates that, on the average, Standing Rock rates highest in mortality rate percentile ranking within the Aberdeen Area. The result is interesting since both Omaha-Winnebago and Yankton had several scores at the 99th percentile while Rosebud had only one category ranked below the 50th percentile.

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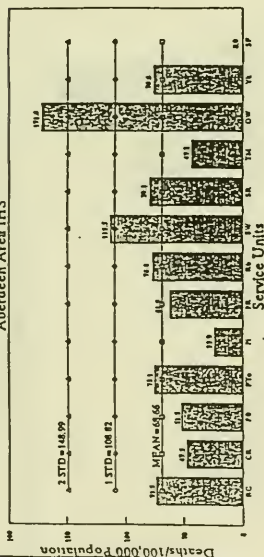
TAB A	CHEYENNE RIVER
TAB B	FORT BERTHOLD
TAB C	FORT TOTTEN
TAB D	OMAHA-WINNEBAGO
TAB E	PIERRE
TAB F	PINE RIDGE
TAB G	RAPID CITY
TAB H	ROSEBUD
TAB I	SAC AND FOX
TAB J	STANDING ROCK
TAB K	SISSETON-WAHPETON
TAB L	TURTLE MOUNTAIN
TAB M	YANKTON





## Alcoholism Mortality Rates

Aberdeen Area IHS

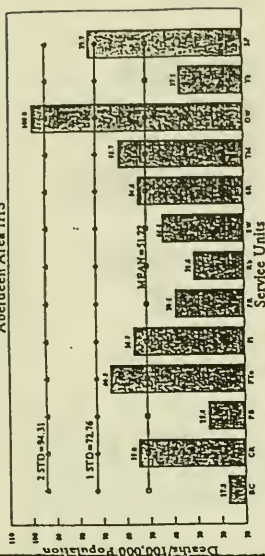


The Cheyenne River (CR) Alcoholism mortality rate of 47.3/100,000 is below the average (mean) Area rate of 68.66/100,000 and within one standard deviation. However, the rate is 688 percent above the U.S. All Races rate of 6.0/100,000 population.

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## Cerebrovascular Mortality Rates

Aberdeen Area IHS

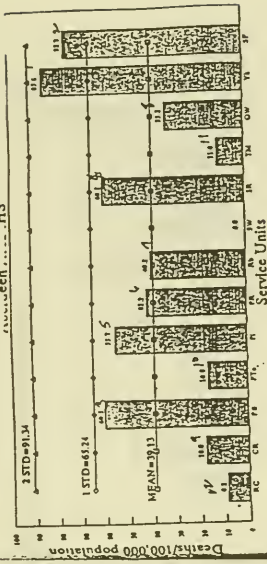


The Cheyenne River (CR) Cerebrovascular mortality rate of 55/100,000 is above the average (mean) Area rate of 51.22/100,000 and within one standard deviation. Also, the rate is 82 percent above the U.S. All Races rate of 30.3/100,000 population.

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# Diabetes Mellitus Mortality Rates

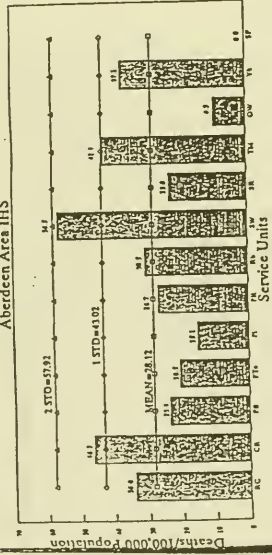


The Cheyenne River (CR) Diabetes Mellitus mortality rate of 18/100,000 is below the average (mean) Area rate of 39.13/100,000 but within one standard deviation. Also, the rate remains 84 percent above the U.S. All Races rate of 9.8/100,000 population.

1. Yellowstone
2. New York
3. Ark. Bottled
4. Standing Rock
5. Pueblo
6. Pueblo
7. Pueblo
8. Pueblo-Winings
9. Cheyenne River
10. Fort Collins
11. Fort Collins
12. Rapid City

Office of Planning, Evaluation, and Legislation.

# COUP Mortality Rates

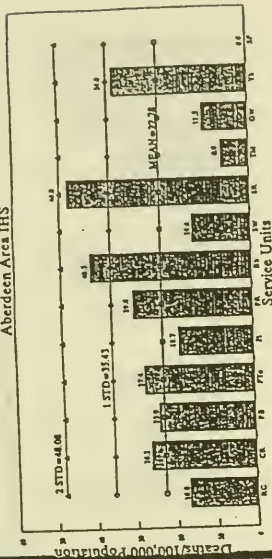


The Cheyenne River (CR) Chronic Obstructive Pulmonary Disease mortality rate of 46.3/100,000 is above the average (mean) Area rate of 28.12/100,000 and within two standard deviations. However, the rate remains 148 percent above the U.S. All Races rate of 18.7/100,000 population.

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# Homicide Mortality Rates

Aberdeen Area IHS



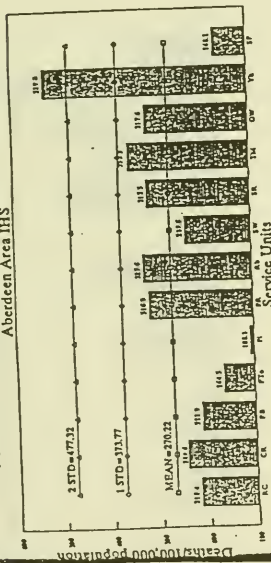
The Cheyenne River (CR) Homicide mortality rate of 26.1/100,000 is above the average (mean) Area rate of 22.78/100,000 and within one standard deviation.

Also, the rate remains 203 percent above the U.S. All Races rate of 8.6/100,000 population.

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# Heart Disease Mortality Rates

Aberdeen Area IHS

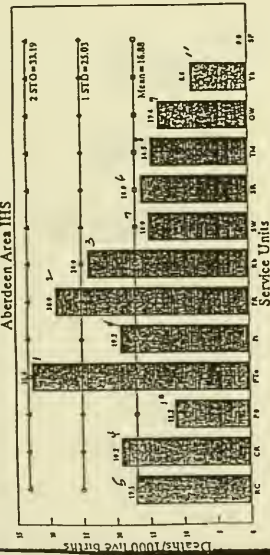


The Cheyenne River (CR) Heart Disease mortality rate of 244.6/100,000 is below the average (mean) Area rate of 270.22/100,000 and within one standard deviation.

However, the rate remains 44 percent above the U.S. All Races rate of 169.6/100,000 population.

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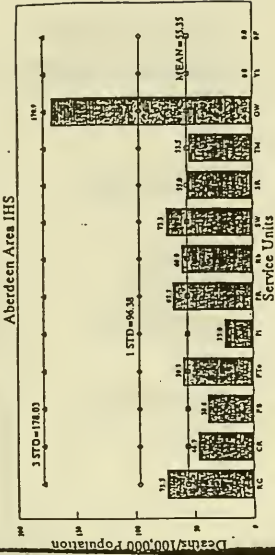
# Infant Mortality



The Cheyenne River (CR) Infant Mortality Rate of 19.2/1000 Live Births is above the average (mean) Area rate of 16.88/1000 and within one standard deviation. Also, the rate remains 90 percent above the U.S. All Races rate of 10.1/1000 Live Births.

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# Liver Disease Mortality rates

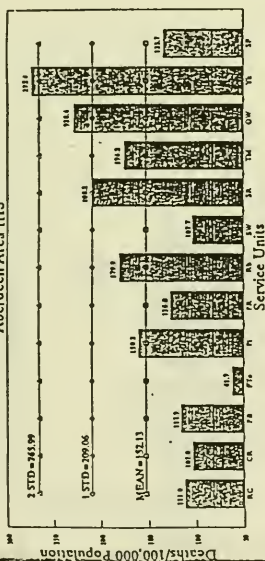


The Cheyenne River (CR) Liver Disease mortality rate of 46.7/100,000 is below the average (mean) Area rate of 55.55/100,000 and within one standard deviation. Also, the rate remains 413 percent above the U.S. All Races rate of 9.1/100,000 population.

Office of Planning, Evaluation, and Legislation.

# Malignant Neoplasm Mortality Rates

Aberdeen Area IHS

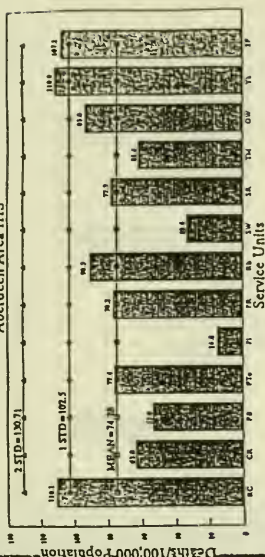


The Cheyenne River (CR) Malignant Neoplasm mortality rate of 102.9/100,000 is below the average (mean) Area rate of 132.13/100,000 and within one standard deviation. Also, the rate is 23 percent below the U.S. All Races rate of 132.9/100,000 population.

Office of Planning, Evaluation, and Legislation.

# Motor Vehicle Mortality Rates

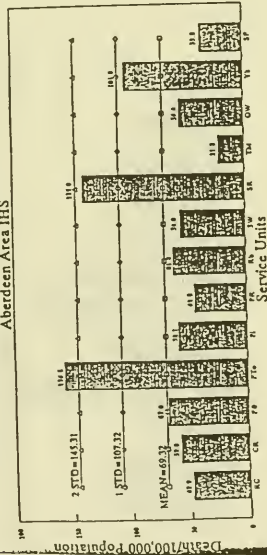
Aberdeen Area IHS



The Cheyenne River (CR) Motor Vehicle mortality rate of 63/100,000 is below the average (mean) Area rate of 74.28/100,000 and within one standard deviation. Also, the rate remains 223 percent above the U.S. All Races rate of 19.5/100,000 population.

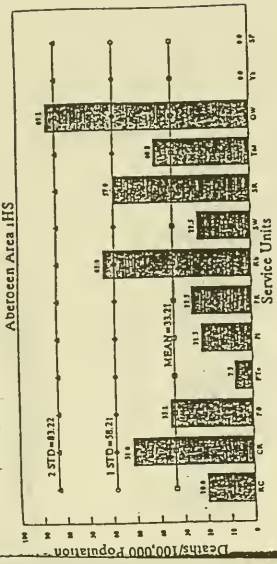
Office of Planning, Evaluation, and Legislation.

# Other Accident Mortality Rates



The Cheyenne River (CR) Other Accident mortality rate of 57.6/100,000 is below the average (mean) Area rate of 69.32/100,000 and within one standard deviation. Also, the rate remains 279 percent above the U.S. All Races rate of 15.2/100,000 population.

# Pneumonia/Flu Mortality Rates

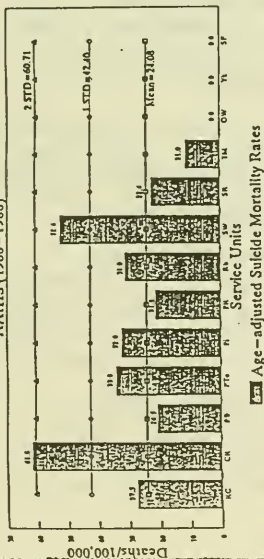


The Cheyenne River (CR) Pneumonia/Flu mortality rate of 51/100,000 is above the average (mean) Area rate of 58.21/100,000 and within one standard deviation. Also, the rate remains 289 percent above the U.S. All Races rate of 13.1/100,000 population.



## Suicide Mortality Rates

AAIHS (1986-1988)

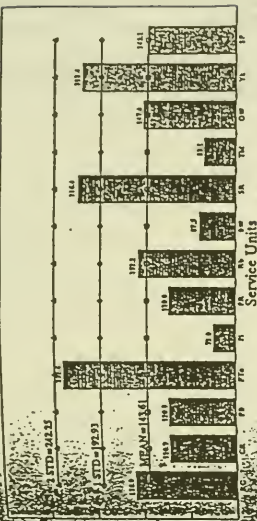


The Cheyenne River (CR) Suicide mortality rate of 61.6/100,000 is above the average (mean) Area rate of 24.08/100,000 and within three standard deviations. Also, the rate is 426 percent above the U.S. All Races rate of 11.7/100,000 population.

Office of Planning, Evaluation, and Legislation.

## Unintentional Injuries Mortality Rates

Aberdeen Area IHS



The Cheyenne River (CR) Unintentional Injuries mortality rate of 11.9/100,000 is below the average (mean) Area rate of 15.51/100,000 and within one standard deviation. Also, the rate remains 249 percent above the U.S. All Races rate of 34.6/100,000 population.

Office of Planning, Evaluation, and Legislation.





## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Public Health Service

Service Unit Director  
PHS Indian Hospital  
Eagle Butte, South Dakota 57625

March 10, 1993

Robert Wood Johnson Foundation  
Healthy Nations Grant Application

To Whom it may concern:

This letter is written in support of the Cheyenne River Sioux Tribe's application for funding for the Healthy Nations Grant Application. As Clinical Director of the Indian Health Service Hospital in Eagle Butte, South Dakota, I am directly familiar with the impact of alcohol among members of the Cheyenne River Sioux Tribe and others eligible for medical treatment through the Indian Health Service.

I am a member of the Cheyenne River Sioux Tribe and a medical doctor. I attended college at the University of California, San Diego and medical school at the University of California, San Diego, School of Medicine. In addition, I did a three year residency in Internal Medicine at the University of Washington, Seattle. Thus, as a physician I well know the deleterious effects of alcohol abuse on the body.

As Clinical Director, it is tragic to note that the majority of trauma seen in the Clinic is alcohol-related. It is clear that more needs to be done in the area of alcohol abuse treatment and prevention here on the reservation. Unfortunately, there is no central coordination among the various programs and individuals working to prevent and/or alleviate such abuse. Moreover, when individuals enter alcohol abuse treatment facilities, they need ongoing support. A residential halfway house would fill this vital need. The need for expanded alcohol abuse and prevention services in this area is clear. This is why I strongly support the Tribe's application for funding for the Healthy Nations Program from the Robert Woods Johnson Foundation.

In addition to supporting the Tribe's Healthy Nations Program application, I support the Tribe's efforts to combat alcohol abuse by serving on the Tribe's Alcoholic Beverage Control Commission as well as through my service as Clinical Director. Importantly, in my official capacity I also plan to

Robert Woods Johnson Foundation  
 Healthy Nations Program  
 Page two  
 March 12, 1993

participate in the Healthy Nations Program. I ask you to give the Tribe's application your fullest consideration.

Sincerely,

*Jeff Henderson, M.D.*

Jeff Henderson, M.D.  
 Clinical Director  
 Indian Health Service Hospital  
 Eagle Butte, South Dakota



## Cheyenne River Community College

Box 220 • Eagle Butte, South Dakota 57625 • (605) 964-6045 • FAX (605) 964-1144

*Joe Lends His Horse, President*

March 10, 1993

Robert Wood Johnson Foundation  
Healthy Nations Grant Application

To Whom it may concern:

This letter is written in support of the Cheyenne River Sioux Tribe's application for funding for the Healthy Nations Grant Application. As the Chairman of the Cheyenne River Community College Board of Directors, I am pleased to support this worthy endeavor. I am hopeful that you will approve the Tribe's application for funding because the problems associated with alcohol abuse on the Cheyenne River and other reservations throughout Indian country are devastating.

In 1988, the Tribal Council adopted a resolution declaring war on alcohol abuse. Indeed, the Council dedicates all the revenue it derives from licensing individuals who sell liquor on the reservation. In light of the strong stand taken against alcohol abuse by the Tribal Council, the Cheyenne River Community College Board offers training and degree programs in alcohol and substance abuse prevention. This is the first time since 1953, when the sale of liquor to American Indians was legalized, that Tribal members are helping one another to learn about, identify, treat and perhaps most importantly, to prevent alcohol abuse.

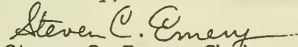
Alcohol addiction creates serious problems in virtually every family on the reservation. In order to provide requisite assistance to individuals in need of evaluation and other types of therapy to identify their problems and achieve sobriety, the Tribe is in need of trained individuals. The Red Road approach to resolving problems associated with alcohol abuse stresses cultural awareness and pride in Lakota identity. To effectively implement the process, we must network with individuals and organizations to create innovative methods of treating alcohol dependency. Lakota families, tiospayes and Tribes must work together to address the dual threat of drugs and alcohol to our youth. Financial assistance from your agency will enable the Tribe to promote cooperation among the governmental agencies charged with combatting alcohol abuse on the reservation.

Robert Wood Johnson Foundation  
Page two  
March 10, 1993

The Cheyenne River Community College is committed to working with the Tribe and others on the reservation interested in alleviating the tremendous pressure that alcohol abuse has brought to bear on all of the people living on the reservation. Alcohol abuse affects people from all walks of life. Perhaps most significantly, alcohol abuse at Cheyenne River is a generational problem impacting family relationships and the educability of individuals afflicted with fetal alcohol syndrome and fetal alcohol effect. Cheyenne River Community College is dedicated to promoting the Lakota language and culture through education -- to restore what was ethnocentrically and paternalistically taken from us by the force of federal law. However, our efforts will make little difference to future generations if the scourge of alcohol abuse continues unchecked. Cheyenne River Community College has undertaken to join the Tribe in the war on alcohol abuse.

If the Tribe's Healthy Nations Program receives requisite funding, it will fortify the Tribe's campaign to lead us into the next century as sober, productive people. Please help us to help ourselves. Respectfully, I urge you to fund the Cheyenne River Sioux Tribe's application for funding for the Healthy Nations Program. Should you require additional information, I would be happy to provide it. Thank you for your consideration.

Sincerely,



Steven C. Emery, Chairman  
Board of Directors  
Cheyenne River Community College



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
 CHEYENNE RIVER AGENCY  
 EAGLE BUTTE, SOUTH DAKOTA 57625  
 P.O. Box 2020 605/964-8722



IN REPLY REFER TO: Education

TO: Robert Wood Johnson Foundation  
 Healthy Nation initiative

FROM: Dr. Cherie Farlee *Acting*  
 Agency Superintendent for Education

DATE: March 12, 1993

SUBJECT: Support Letter

To whom it may concern:

The Cheyenne River Agency Education Office along with Administrators, Drug and Alcohol counselors, teachers, and support staff support the Robert Wood Johnson Healthy Nations initiative. There is a need for this type of program to bring all the Agencies together in a unified manner, as stated the initiative is intended to complement the on-going efforts of the Indian Health Service, the Bureau of Indian Affairs, the Office of Substance Abuse Prevention, and state and local governments.

If we are fortunate to have this program funded on this Reservation the Cheyenne River Education office hereby pledges to actively participate in the program by working together for all the students and others interested in promoting Education on the Reservation. We can make the Reservation a healthier more productive place.

If this office can be of further assistance please call 605/964-8722.

Thank you.

cc: Chairman Bourland  
 File

CHEYENNE RIVER SIOUX TRIBE  
ROBERT WOOD JOHNSON FOUNDATION  
HEALTHY NATIONS GRANT APPLICATION

March 12, 1993

Dear Sirs:

I am writing in support of the Cheyenne River Sioux Tribe's Healthy Nations Grant application.

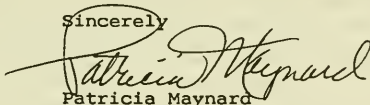
Alcohol abuse has become astronomical on our Reservation and even though the Cheyenne River Sioux tribe has declared war on Alcohol and Drug abuse by the year 2000, without adequate funding to help those efforts it is near impossible to implement programs which can not be properly maintained and managed to be effective.

Treatment, aftercare, counseling and the facilities to work with members in recovery are badly needed. Children who suffer the most from parents who are alcohol abusers do not have the care and love they need to develop into responsible adults. Without that, they also become abusers, their lifestyle never changes, it becomes a vicious circle.

The City of Eagle Butte supports the Tribe in their efforts to fight Alcohol abuse and will work with them in every aspect to try to curb a problem that has long been neglected.

I believe the Healthy Nations Program is vital to the well being of our people. Your strong consideration and support of this grant is highly recommended.

Sincerely

A handwritten signature in dark ink, appearing to read "Patricia Maynard". The signature is fluid and cursive, with the first name "Patricia" being more prominent and the last name "Maynard" following in a similar style.

Patricia Maynard  
Acting Mayor  
City of Eagle Butte





# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

CHEYENNE RIVER AGENCY

EAGLE BUTTE, SOUTH DAKOTA 57625

IN REPLY REFER TO:  
Administration

March 12, 1993

Robert Wood Johnson Foundation  
Healthy Nations Grant Application

To Whom it may concern:

This letter is written in support of the Cheyenne River Sioux Tribe's application for funding for the Healthy Nations Grant Application. As Superintendent of Bureau of Indian Affairs (hereafter "BIA") Cheyenne River Agency located at Eagle Butte, South Dakota, I am directly familiar with the impact of alcohol among members of the Cheyenne River Sioux Tribe and other Native Americans residing on the Cheyenne River Reservation.

Among the services offered by the BIA at Cheyenne River perhaps the primary services related to alcohol abuse treatment and prevention are those provided by the Department of Social Services. They include: counseling those afflicted with alcohol abuse, providing requisite financial assistance to the alcohol abusers and their families by assisting a spouse or family member to become the protective payee for them or, alternately, by having BIA Social Services staff serve as protective payee.

Alcoholism takes a heavy toll on the reservation in terms of: lives lost and/or ruined through alcohol abuse, dysfunctional families and also in terms of hours lost by employers. The various agencies of the Tribal government and the federal government are the most significant employers on the reservation. In that regard, it is BIA policy to treat alcoholism the same as any other disease is treated. To the extent that employees need or wish to do so they are afforded the opportunity to meet with the Employee Assistance Counselor regarding alcohol abuse.

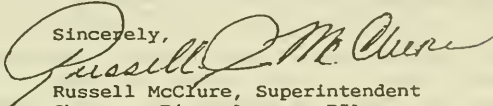
I am aware that there is a lack of coordination on the reservation among those working to treat and prevent alcohol abuse. This is why I strongly and enthusiastically support the Tribe's application to the Robert Woods Johnson Foundation for funding for the Healthy Nations Program. We need to ensure that the full array of services agencies bring their resources to bear on the problem of alcohol abuse.

Robert Woods Johnson Foundation  
Healthy Nations Program  
Page two  
March 12, 1993

Another facet of the problem is that no facility exists on the reservation to which individuals receiving alcohol abuse therapy and treatment may turn to for support when they return to the reservation after such treatment. This is greatly needed!

In the event that the Tribe's Healthy Nations Program is funded by the foundation, the BIA will be an active participant. Together with the Tribe, we will work to combat this terrible disease.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russell McClure". The signature is written in dark ink and is positioned above the printed name and title.

Russell McClure, Superintendent  
Cheyenne River Agency, BIA

CHEYENNE RIVER SIOUX TRIBE  
ROBERT WOOD JOHNSON FOUNDATION  
HEALTHY NATIONS GRANT APPLICATION

March 12, 1993

To whom it may concern:

I am writing this letter in support of the Cheyenne River Sioux Tribe's "Healthy Nations" grant application.

The Cheyenne River Sioux Tribal Law Enforcement Department is indeed aware of the effect alcohol has taken on all people residing within the boundaries of the Cheyenne River Reservation.

In 1988, the CRST Law Enforcement Department tried a different approach in an attempt to decrease the amount of alcohol-related incidents through education rather than the existing punitive measures. The DARE (Drug Abuse Resistance Education) Program was implemented.

The DARE Program is instructed by Police Officers who were willing to undergo a very intense two-week training and certification course. The 17-week program includes lessons on rights & responsibilities, peer pressure, self-esteem, stress, media influences, and the effects of alcohol. DARE is taught throughout the school year to all 6th grade classes, with a Culmination (graduation) Ceremony held at the end of the program. Special recognition is given to those participants. During school vacation periods, DARE Officers coordinate various activities, to continue steering them in the right direction, i.e., little league baseball, trail rides, etc., to strengthen the rapport with all youth on the reservation.

By having the privileged opportunity in becoming a DARE Instructor, I've experienced the effectiveness of the program, which has proven to reduce the amount of calls for alcohol-related incidents relating to juveniles.

Although the DARE program has played an effective role educating youth in the "War on Alcohol", other measures have also been taken.

In 1993, the Cheyenne River Sioux Tribe will enter a new era, upon the completion of a new detention center. This center will include both adult and juvenile detention facilities, as well as a Social Detox unit. The Social Detox unit has been designed to serve as a pre-treatment program for alcohol-related offenders.

Robert Wood Johnson Foundation

Page 2

Although the CRST Law Enforcement Department has taken extreme measures in the "War on Alcohol", additional ongoing programs are desperately needed. The lack of adequate funding always plays a major role on restricting these much needed programs.

Should the Cheyenne River Sioux Tribe be recipients of the Healthy Nations Grant, major steps can be taken to assure adequate attention is given to this dreaded disease, alcohol.

Your most favorable consideration and support regarding this letter is greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "CHARLES L. FISCHER". The signature is fluid and cursive, with the first name "CHARLES" being more prominent and the last name "FISCHER" following in a similar style.

Charles L. Fischer  
Administrative Officer  
CRST Law Enforcement Department

Cheyenne River Sioux Tribe  
Robert Wood Johnson Foundation  
Healthy Nations Grant Application

March 10, 1993

Dear Sirs:

I am writing in support of the Cheyenne River Sioux Tribe's Healthy Nation grant application.

For the past several years, I have been involved with the Cheyenne River Sobriety Support Group -- a non-profit group which provides peer support for reservation residents who have suffered or are suffering from alcohol abuse. Our goal is to stay alcohol free. We do so by sharing our problems at our annual retreat and frequently using cultural activities, such as wacipis (pow-wows), sweat lodge ceremonies, and even religious activities, such as the sacred Sun Dance, where dancers pledge to remain alcohol and drug free for at least one year prior to the ceremony.

The scope of the problem of alcohol abuse on the Cheyenne River Indian Reservation is incredible, every Indian person on the Reservation suffers from alcohol abuse directly or through a family member. Alcohol abuse results in serious family problems and health problems, even death, among our tribal members.

The Tribe has recognized the problem, and has declared War on Alcohol Abuse, and there are many federal, tribal and private organizations involved in the effort to fight alcohol abuse. . . but these efforts are not coordinated and are underfunded. So, education efforts, prevention efforts, treatment and aftercare are ineffective. Therefore, the Healthy Nations Program would greatly benefit the people of the Cheyenne River Reservation by coordinating tribal, federal, and private efforts, and providing much needed aftercare. (It simply makes no sense to spend \$3 to \$5,000 for in-patient treatment and then drop a person back in the same alcoholic environment they just left -- that leaves the treatment destined to fail.)

In short, the Healthy Nations Program could help the Tribe save families and save lives, so I strongly support it. Also, I will be willing to work with the program Director to support the fight against alcohol abuse by integrating traditional cultural activities and ceremonies in to prevention, treatment and maintenance efforts those who suffer from alcohol abuse.

Sincerely,



William D. Picotte  
Sobriety Support Group

Cheyenne River Sioux Tribe  
Robert Wood Johnson Foundation  
Healthy Nations Grant Application

March 12, 1993

Dear Sirs:

I am writing in support of the Cheyenne River Sioux Tribe's Healthy Nation Grant Application.

The Cheyenne River Sioux Tribe's Cultural Center is dedicated to promoting and preserving the culture, ceremonies, language, and traditions of the Lakota people. We regularly conduct ceremonies, such as the "Wiping of the Tears," ceremony, which is intended to help our Indian people overcome their grief at the loss of family members (often through alcohol related causes). Periodically, the Cultural Center hosts wacipis (pow-wows), which provides alcohol free recreation while promoting our culture. For youngsters, we host the Oyate Cikala Dance Club every Tuesday night, instilling knowledge and pride in our cultural traditions, giving the youngsters an added sense of self-worth, and teaching them how to enjoy life in an alcohol-free environment.

As Acting Director of the Cultural Center, I have observed that alcohol abuse is both serious and widespread on the Reservation. If a person is not himself suffering from alcohol abuse, his or her family members are quite likely suffering from it. Therefore, I support the Tribe's War on Alcohol Abuse and the Healthy Nation's grant application. In particular, I believe that funding for the Healthy Nations Director will help to coordinate the somewhat scattered federal, tribal, and community efforts to fight alcohol abuse.

If the Tribe is awarded a Healthy Nations grant, the cultural center will assist the tribe in incorporating Lakota traditional cultural activities and ceremonies into the program.

Sincerely,

*Trini Bird Necklace*

Trini Bird Necklace  
Acting Director of the  
C.R.S.T. Cultural Center



Robert Wood Johnson Foundation  
Healthy Nations Program

LETTER OF SUPPORT

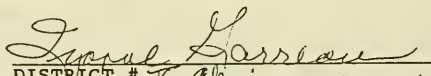
As Chairman of District ~~Five (5)~~ <sup>One (1)</sup> of the Cheyenne River Indian Reservation, I strongly support the submission of the Tribes' proposal to address the problems of alcohol and drug abuse on our reservation. To our knowledge we are the only Tribe by resolution to have formally "Declared War on Alcoholism".

The communities in our district embraces any concepts or approach toward reducing the incidence of alcohol of drug abuse among our community members.

Your organization can be assured that our District will support the activities of the tribe in their efforts to wage the war on alcoholism on our reservation.

We urge the careful review of our tribes proposal and recommend that you strongly consider funding this proposal.

Sincerely

  
DISTRICT # ~~5~~ Chair person

Robert Wood Johnson Foundation  
Healthy Nations Program

LETTER OF SUPPORT

*Secretary*

As ~~Chairman~~ <sup>*One (1)*</sup> of District Five (5) of the Cheyenne River Indian Reservation, I strongly support the submission of the Tribes' proposal to address the problems of alcohol and drug abuse on our reservation. To our knowledge we are the only Tribe by resolution to have formally "Declared War on Alcoholism".

The communities in our district embraces any concepts or approach toward reducing the incidence of alcohol of drug abuse among our community members.

Your organization can be assured that our District will support the activities of the tribe in their efforts to wage the war on alcoholism on our reservation.

We urge the careful review of our tribes proposal and recommend that you strongly consider funding this proposal.

Sincerely

*Alta LeBlanc*  
DISTRICT #1 *Secretary*

Robert Wood Johnson Foundation  
Healthy Nations Program

LETTER OF SUPPORT

As Chairman of District ~~Five (5)~~ <sup>Three (3)</sup> of the Cheyenne River Indian Reservation, I strongly support the submission of the Tribes' proposal to address the problems of alcohol and drug abuse on our reservation. To our knowledge we are the only Tribe by resolution to have formally "Declared War on Alcoholism".

The communities in our district embraces any concepts or approach toward reducing the incidence of alcohol of drug abuse among our community members.

Your organization can be assured that our District will support the activities of the tribe in their efforts to wage the war on alcoholism on our reservation.

We urge the careful review of our tribes proposal and recommend that you strongly consider funding this proposal.

Sincerely

Deloris - Wright Head  
DISTRICT #3 Chairperson

Robert Wood Johnson Foundation  
Healthy Nations Program

LETTER OF SUPPORT

As Chairman of District ~~Five~~ <sup>Six (6)</sup> (5) of the Cheyenne River Indian Reservation, I strongly support the submission of the Tribes' proposal to address the problems of alcohol and drug abuse on our reservation. To our knowledge we are the only Tribe by resolution to have formally "Declared War on Alcoholism".

The communities in our district embraces any concepts or approach toward reducing the incidence of alcohol of drug abuse among our community members.

Your organization can be assured that our District will support the activities of the tribe in their efforts to wage the war on alcoholism on our reservation.

We urge the careful review of our tribes proposal and recommend that you strongly consider funding this proposal.

Sincerely

Duke Wagner  
DISTRICT #6  
Chairman

Robert Wood Johnson Foundation  
Healthy Nations Program

LETTER OF SUPPORT

As Chairman of District ~~Five (6)~~ <sup>Four 4</sup> of the Cheyenne River Indian Reservation, I strongly support the submission of the Tribes' proposal to address the problems of alcohol and drug abuse on our reservation. To our knowledge we are the only Tribe by resolution to have formally "Declared War on Alcoholism".

The communities in our district embraces any concepts or approach toward reducing the incidence of alcohol of drug abuse among our community members.

Your organization can be assured that our District will support the activities of the tribe in their efforts to wage the war on alcoholism on our reservation.

We urge the careful review of our tribes proposal and recommend that you strongly consider funding this proposal.

Sincerely

*Chairman Grand Inge*  
DISTRICT #



Robert Wood Johnson Foundation  
Healthy Nations Program

LETTER OF SUPPORT

As Director of the Alcohol Program, I strongly request that the Healthy Nations Grant Application be funded. The grant will provide much needed coordination among existing alcohol and drug abuse prevention programs. In the second phase of the grant a pilot project to provide aftercare treatment for those who receive intensive institutional alcohol and drug abuse therapy will provide a model for successful treatment.

The Alcohol Program currently provides community education and outpatient counseling service to those individuals and families suffering from alcohol and drug abuse. In addition, we offer referral services and intervention programs. We are using every available resource to conquer the abuse of alcohol and drugs. However, in order to reduce alcoholism for our future generations, more needs to be done. We are concentrating on outpatient and aftercare treatment but, our existing programs are just not coordinated and your assistance would enable us to provide a comprehensive approach to alcohol and drug abuse prevention and treatment. An effective follow up program is needed to further treatment for individuals after rehabilitation treatment.

I urge the careful review of our application and recommend that you strongly consider funding this proposal.

Sincerely,

*Theda Traversie*

Theda Traversie  
Alcohol Program Director





## Sacred Heart Center

Box 2000, LANDMARK STREET  
EAGLE BUTTE, SD 57625-2000  
(605) 964-6062

WOMEN'S SHELTER 964-7233 (SAFE)  
ADOLESCENT SHELTERS: KOSKALAKA OTI 964-8121  
WIKOSKALAKA OTI 964-6069

March 12, 1993

To Whom It May Concern,

This is a letter in support of the Cheyenne River Sioux Tribal Alcohol/Drug Prevention Program, which is pursuing funding in order to further address the harmful effects of substance on our Reservations.

Sacred Heart Center is a private community-wide service organization which provides shelter and direct services to women and their children who are victims of domestic violence and sexual assault and also adolescent boys and girls whose needs are not being met within their family setting. During the past fiscal year we served 704 residents with a total of 5603 shelter days. Of this total about 75% of the domestic violence incidents were related to alcohol abuse within the family, and approximately 90% of the adolescents came from families where substance abuse was prevalent. A substantial number of the referrals to Sacred Heart Adolescent Shelter are from the CRST Alcohol/Drug Prevention Program. Teens often spent 30 days with us in preparation for treatment or as part of After Care.

Most of the individuals and families served by Sacred Heart Center have suffered the effects of the misuse and abuse of alcohol. We concur with the Cheyenne Sioux Tribe in their fight against alcohol and drug abuse. We realize that the problem is great and the resources little. Therefore we, as an organization who see firsthand the effects of the problem, support the Cheyenne River Sioux Tribe in their endeavor to secure funding in order to address the problem of prevention and rehabilitation.

Sincerely,

*Ruth Geraets*

Sr. Ruth Geraets, PBVM  
Director of Sacred Heart Center

CHAIRMAN  
Gregg J. Bourland

SECRETARY  
Arlene Thompson

TREASURER  
JoHanna High Bear

VICE-CHAIRMAN  
Lanny LaPlante



P O Box 590  
Eagle Butte, South Dakota 57625  
(605) 964-4155  
Fax (605) 964-4151

March 15, 1993

TRIBAL COUNCIL MEMBERS

DISTRICT 1  
Raymond Uses The Knife Jr.  
Vernon Mestes

DISTRICT 2  
Ted Knife Sr.

DISTRICT 3  
Maynard Dupuis  
Ed Whow

DISTRICT 4  
Robert Lofton Sr.  
Rocky LaCompte  
Orville LaPlante  
Arise High Elk

DISTRICT 5  
Gilbert Marshall  
Marcelo LeBeau  
Robert Chasing Hawk  
Lanny LaPlante

DISTRICT 6  
Calvin "Red" Traversie  
Lauris Dubray

Healthy Nations National Program Office  
Department of Psychiatry, C249-17  
University of Colorado Health Sciences Center  
4200 East Ninth Avenue  
Denver, CO 80262

Re: Cheyenne River Sioux Tribe Healthy Nations Application

Dear Sirs:

On behalf of the Cheyenne River Sioux Tribe, I hereby request funding for the Cheyenne River Sioux Tribe's Healthy Nations Application. The Cheyenne River Sioux Tribe has been recognized as an Indian tribe by the federal government since 1889 and continues to be so recognized today. As Vice-Chairman of the Tribe, I am authorized to make the foregoing request and the foregoing representation. I sincerely hope that you will fund this proposal because alcohol abuse is a serious, widespread problem on the Reservation.

Sincerely,

*Lanny LaPlante*

Lanny LaPlante, Vice Chairman  
Cheyenne River Sioux Tribe

The blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka—the Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

THE ROBERT WOOD JOHNSON FOUNDATION  
HEALTHY NATIONS -- LINE ITEM BUDGET  
CHEYENNE RIVER SIOUX TRIBE

Grant Period: (from 10/01/93 to 09/30/95)

Budget Period: (from 10/01/93 to 09/30/94)

PROJECT PHASE I, YEAR 1

PERSONNEL				Total	RWJF	Other
Name	Position	Base Salary	% Time			
Dr. Ertz	Director	\$48,500	80%	\$38,800	38,800	-0-
P/T Secretary	(To be announced)			\$ 7,690	7,690	-0-
Fringe benefits				\$11,302	11,302	-0-
Office Operations:						
	Supplies			\$ 3,625	3,625	-0-
	Duplicating			\$ 720	-0-	720
	Telephone			\$ 1,800	1,800	-0-
	Postage			\$ 150	-0-	150
	Computer Time			\$ 3,000	-0-	3,000
	Project Staff Travel			\$ 2,000	2,000	-0-
	Indirect Costs (15%)			\$ 9,783	9,783	-0-
	Space Rental			\$ 2,400	2,400	-0-
TOTAL				\$81,270	75,000	6,270

THE ROBERT WOOD JOHNSON FOUNDATION  
HEALTHY NATIONS -- LINE ITEM BUDGET  
CHEYENNE RIVER SIOUX TRIBE

Grant Period: (from 10/01/93 to 09/30/95)

Budget Period: (from 10/01/94 to 09/30/95)

PROJECT PHASE I, YEAR 2

PERSONNEL				Total	RWJF	Other
Name	Position	Base Salary	% Time			
Dr. Ertz	Director	\$48,500	80%	\$38,800	38,800	-0-
P/T Secretary	(To be announced)			\$ 7,690	7,690	-0-
Fringe benefits				\$11,302	11,302	-0-
Office Operations:						
	Supplies			\$ 3,625	3,625	-0-
	Duplicating			\$ 720	-0-	720
	Telephone			\$ 1,800	1,800	-0-
	Postage			\$ 150	-0-	150
	Computer Time			\$ 3,000	-0-	3,000
	Project Staff Travel			\$ 2,000	2,000	-0-
	Indirect Costs (15%)			\$ 9,783	9,783	-0-
	Space Rental			\$ 2,400	2,400	-0-
TOTAL				\$81,270	75,000	6,270

## BUDGET NARRATIVE

## 1. PERSONNEL:

The Project Director: The heart of the Cheyenne River Sioux Tribe's Healthy Nation's Program is to coordinate and evaluate existing resources directed against alcohol abuse, and to plan a comprehensive approach to alcohol abuse, including a full spectrum of treatment for alcohol abusers, for Phase II. The Director will chair the Task Force on Alcohol Abuse Prevention and to carry out the coordination, evaluation, and planning functions in conjunction with existing staff. Thus, it is critical to have a qualified person for the job at a reasonable pay rate.

Part-time Secretarial Help: Much of the Director's work will be document intensive and accordingly the Director will require secretarial help. If a 1/2 time secretary is insufficient for this purpose, the Tribe will supplement these services with existing staff.

## 2. FRINGE BENEFITS:

The Tribe provides health insurance, unemployment insurance, and social security, at the rate of 26%.

## 3. OFFICE SUPPLIES:

These office supplies, duplicating, printing, and telephone are the minimum supplies necessary to maintain the office and carry out the functions of the Healthy Nations Project in coordination and evaluation of existing programs, and planning for Phase II.

## 4. PROJECT STAFF TRAVEL:

The Project Director will need to travel throughout the the Reservation and the State. Given the expansiveness of the Cheyenne River Sioux Reservation \$2,000 at \$0.25 per mile that equals 8,000 miles of travel. With one round trip to Bridger equalling approximately 150 miles this is a reasonable estimate.

## 5. INDIRECT COST

The Tribe's indirect cost rate of 15% is reasonable in light of the administrative, financial, and legal services that will be available to the Healthy Nations Program. This is the Tribe's standard rate.

## 6. SPACE RENTAL:

Office space will be needed to carry out the program.



The  
Robert Wood Johnson  
Foundation

P.O. Box 2316  
Princeton, New Jersey 08543  
(609) 452-8701

Request for Project Support  
and  
Conditions of Grant

Title of Project:

CHEYENNE RIVER SIOUX TRIBE HEALTHY NATIONS PROGRAM

Purpose of Project: To coordinate existing alcohol abuse prevention and treatment efforts on the Cheyenne River Indian Reservation and plan for Project II of the Healthy Nations Program.

Applicant Institution:

CHEYENNE RIVER SIOUX TRIBE

Period for which Support is Requested (total project period):

From 10-01-93 Through 10-01-95  
(Mo. Day Year) (Mo. Day Year)

Address and Phone Number:

P.O. Box 590  
Eagle Butte, SD 57625-0590

Amount of Support Requested (total project period):

\$150,000.00

\*Project Director (name, title, address, phone number):

Dr. Dewey Ertz, Counsellor  
Prospective Project Director  
P.O. Box 590  
Eagle Butte, SD 57625

(NOTE: Signature required on page 4) (605) 964-8622

Institutional Financial Officer (name, title, address, phone number):

Judith Kessler, Tribal Comptroller  
P.O. Box 590  
Eagle Butte, SD 57625-0590  
(605) 964-8344

Check to be Made Payable to: CHEYENNE RIVER SIOUX

Applicant's tax-exempt status:

Before the Foundation can take final action on your proposal, we need evidence that your institution is currently a tax-exempt entity, as described in Section 501(c)(3) of the Internal Revenue Code, and is not a private foundation described in Section 509(a). These requirements will be satisfied by your providing us with: (1) a copy of your 501(c)(3) exemption certificate; (2) a copy of Form 4653 or Form 1023 and other data, if any, filed with the Internal Revenue Service. These documents must be accompanied by a letter signed by a responsible officer of your institution certifying that the copies so provided are true and correct copies of the originals on file with your institution and that they remain in full force and effect. PLEASE ATTACH THE LETTER AND THE COPIES OF THESE DOCUMENTS TO THIS FORM. If your institution is not recognized as a tax-exempt entity, briefly describe its organization.

Any questions you may have about your tax-exempt status should be directed to the Foundation officer working with you on your proposal (609/452-8701).

Conditions of grant:

Following are the conditions applying to grants made by The Robert Wood Johnson Foundation. You should read these conditions carefully prior to signing this form. Your signature on this form constitutes your acceptance in full of all conditions contained herein.

Institutional Approval:

Name and title of official authorized to sign for institution:

Lanny LaPlante  
Vice-Chairman  
Cheyenne River Sioux Tribe

Institutional Approval:

*Lanny LaPlante*

(Signature of authorized official)

Date March 15, 1993

(NOTE: Signature also required on page 4)

\*The project director is the individual directly responsible for developing the proposed activity, its implementation, and day-to-day direct supervision of the project should funds be made available.

DATE 3/15/93



## CONDITIONS OF GRANT

To induce the Foundation to make the grant requested hereby, the grantee accepts and agrees to comply with the following conditions in the event that such grant is awarded.

1. **PURPOSE AND ADMINISTRATION.** The grant shall be used exclusively for the purposes specified in the grantee's proposal, dated March 15, 1993, the Request of Project Support Form on page 1 hereof, and related documents, all as approved by the Foundation. In the event that the funds are not used for these purposes within the time specified in the grantee's proposal or within any approved extension of said time period, the funds shall be returned to the Foundation.

The grantee will directly administer the project or program being supported by the grant and agrees that no grant funds shall be disbursed to any organization or entity, whether or not formed by the grantee, other than as specifically set forth in the grant proposal referred to above.

Except as may otherwise be provided in Section 12 hereof, all copyright interests in materials produced as a result of this grant are owned by the grantee. The Foundation, however, retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, alter, or otherwise use and to authorize others to use any such materials for Foundation purposes.

2. **USE OF GRANT FUNDS.**

- A. No part of the grant shall be used to carry on propaganda or otherwise influence legislation (within the meaning of Section 4945(d)(1) of the Internal Revenue Code).
- B. No part of the grant shall be used to attempt to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within meaning of Section 4945(d)(2) of the Internal Revenue Code).
- C. The grantee shall not use any part of the grant funds to provide a grant to an individual for travel, study, or similar purpose except under procedures which have been approved in advance by the Secretary of the Treasury or his delegate under Section 4945(g) of the Internal Revenue Code and without prior written approval of The Robert Wood Johnson Foundation. Payments of salaries, other compensation or expense reimbursement to employees of grantee within the scope of their employment do not constitute "grants" for these purposes, and are not subject to these restrictions.
- D. No part of the grant shall be used for a grant to another organization without prior written approval of The Robert Wood Johnson Foundation.
- E. No part of the grant shall be used for other than religious, charitable, scientific, literary, or educational purposes or the prevention of cruelty to children or animals (within meaning of Section 170(c)(2)(B) of the Internal Revenue Code).

3. **BUDGET.** Expenditures of the grant funds must adhere to the specific line items in the grantee's approved grant budget. Transfers among line items (increases and decreases) are restricted to one thousand dollars (\$1,000) or ten percent (10%) of the approved line item amount, whichever is greater. If a transfer in excess of this restricted level becomes necessary, the grantee shall promptly request authorization therefore from the Treasurer of the Foundation by letter, giving full details. Such transfers may not be made without prior written approval by the Foundation.

4. **ACCOUNTING AND AUDIT.** A systematic record on a fund-accounting basis shall be kept by the grantee of the receipt and disbursement of funds and expenditures incurred under the terms of the grant, and the substantiating documents such as bills, invoices, cancelled checks, receipts, etc., shall be retained in the grantee's files for a period of not less than four (4) years after expiration of the grant period. The grantee agrees to promptly furnish the Foundation with copies of such documents upon the Foundation's request.

The grantee agrees to make its books and records available to the Foundation at reasonable times.

The Foundation, at its expense, may audit or have audited the books and records of the grantee insofar as they relate to the disposition of the funds granted by the Foundation, and the grantee shall provide all necessary assistance in connection therewith.

5. **REPORTS.** Narrative and financial reports shall be furnished by the grantee to the Foundation for each budget period of the grant and upon expiration or termination of the grant. Such reports shall be furnished to the Foundation within a reasonable period of time after the close of the period for which such reports are made. The narrative report shall include a report on the use of the funds in compliance with the terms of the grant; the progress made by the grantee towards achieving the grant purposes, and any problems or obstacles encountered in the effort to achieve the grant purposes.

The financial report should be in the same format as the approved grant budget, and should show the amount budgeted for each line item, the amount expended against each line item as of the date of the report, and the resulting balance remaining in each line. Totals should be shown for each of the three columns. If an encumbrance system is used, encumbrances should be shown in a separate column from cash expenditures.

The Foundation may, at its expense, monitor and conduct an evaluation of operations under the grant, which may include visits by representatives of the Foundation to observe the grantee's program procedures and operations and to discuss the program with the grantee's personnel.

6. **FOUNDATION USE OF DATA AND PUBLIC USE DATA TAPES.** The Foundation shall retain a nonexclusive, irrevocable, royalty-free license to use and to license others to use any and all data collected in connection with the grant in any and all forms in which said data are fixed. If the box below is checked, the grantee shall, at no additional cost to the Foundation, cause public use data tape(s) to be constructed (with appropriate adjustments to assure individual privacy) in accordance with the specifications of the Inter-University Consortium for Political and Social Research, University of Michigan, including the full tape documentation outlined in the Consortium's current data preparation manual. Unless the Foundation shall otherwise specify, such public use data tape(s) shall include all data files used to conduct the analysis under the grant. One computer-readable copy of such public use data tape(s) and the tape documentation shall be transmitted to the Foundation within ninety (90) days after termination of the grant for deposit with the Consortium.

☐ Public use data tape(s) and full documentation required.

7. **PUBLIC REPORTING.** The Foundation will report this grant, if made, in its next Annual Report. The Foundation does not usually issue press releases on individual grants; however, should it elect to do so, it would be discussed with the grantee in advance of dissemination. The grantee may issue its own press announcement, but shall seek approval of the announcement from the Foundation before distribution. In addition, the grantee will be asked to review and approve a Program Summary briefly describing the grantee's activity which will be used by the Foundation to respond to inquiries and for other public information purposes.

The grantee shall send to the Foundation copies of all papers, manuscripts, and other information materials which it produces that are related to the project supported by the Foundation.

In all public statements concerning the Foundation—press releases, annual reports, or other announcements—grantees are specifically requested to refer to the Foundation by its full name: The Robert Wood Johnson Foundation.

8. **GRANTEE TAX STATUS.** The grantee represents that it is a nonprofit, tax-exempt organization as defined in Section 501(c)(3) of the Internal Revenue Code and is not a private foundation as defined in Section 509(a) of the Internal Revenue Code. The grantee shall immediately give written notice to the Foundation if the grantee ceases to be exempt from Federal income tax under Section 501(c)(3) or its status as not a private foundation under Section 509(a) is materially changed. The grantee agrees to apply the proceeds of the grant solely to exempt purposes specified in Section 170(c)(2)(B) of the Internal Revenue Code.

It is expressly agreed that any change in the grantee's tax status or any use by the grantee of the grant proceeds for any purpose other than those specified in Section 170(c)(2)(B) of the Internal Revenue Code will terminate the obligation of the Foundation to make further payments under the grant.

9. **CERTIFICATION REQUIRED WHEN GRANT MAY BE USED FOR RESEARCH INVOLVING HUMAN SUBJECTS.** If the grant is to be used in whole or in part for research involving human subjects, the grantee hereby certifies that an institutional review board, which applies the ethical standards and the criteria for approval of grants set forth in Department of Health and Human Services policy for the protection of human research subjects (45 CFR part 46, as amended from time to time), has determined that the human subjects involved in this grant will not experience risk over and above that involved in the normal process of care and are likely to benefit from the proposed research program.

10. **GRANT REVERSION AND TERMINATION.** If the grant is intended to support a specific project or to provide support for a specific period of time, any portion of the grant unexpended at the completion of the project or at the end of the time period and any authorized extension thereof shall be returned to the Foundation within fifteen (15) days.

The Foundation, at its sole option, may terminate the grant at any time if (i) the grantee ceases to be exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code; (ii) the grantee's status as not a private foundation under Section 509(a) of the Internal Revenue Code is materially altered; or (iii) in the Foundation's judgment, the grantee becomes unable to carry out the purposes of the grant, ceases to be an appropriate means of accomplishing the purposes of the grant, or fails to comply with any of the conditions hereof.

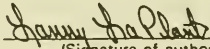
If the grant is terminated prior to the scheduled completion date, the grantee shall, upon request by the Foundation, provide to the Foundation a full accounting of the receipt and disbursement of funds and

expenditures incurred under the grant as of the effective date of termination. The grantee shall repay within thirty (30) days after written request by the Foundation all grant funds unexpended as of the effective date of termination and all grant funds expended for purposes or items allocable to the period of time subsequent to the effective date of termination.

11. **LIMITATION; CHANGES.** It is expressly understood that the Foundation by making this grant has no obligation to provide other or additional support to the grantee for purposes of this project or any other purposes. Any changes, additions or deletions to the conditions of the grant must be made in writing only and must be jointly approved by the Foundation and the grantee.
12. **SPECIAL CONDITIONS.** The grantee accepts and agrees to comply with the following Special Conditions (if no Special Conditions are imposed, so state):

The foregoing conditions are hereby accepted and agreed to as of the date indicated.

Date: March 15, 1993 Grantee Institution: Cheyenne River Sioux Tribe

By:   
(Signature of authorized official)

Title: Vice-Chairman

Date: 3/15/93

By:   
(Signature of Project Director)

Mr. RICHARDSON. Mr. Van Norman, before I recognize Congressman Johnson, you have struck a little bit of a raw nerve, because the Duro bill was my bill. Are you saying that the State is not observing it, not enforcing it properly?

Mr. VAN NORMAN. I guess what I am saying is this: Duro should not even apply to us, because we are all members of the Sioux Nation. We have artificially been divided by the United States. So, that whole thing does not even apply.

If it did, what the State has done here is the legislature has applauded you for fixing the jurisdictional void. Meanwhile, the State Attorney General's office says your bill is unconstitutional, and I think, at the first chance, they will probably challenge it in the courts, but in the meantime, they are using this as sort of a leverage against us, because they know the tribes out here guard their jurisdiction; so, we are going to leverage you out of half of your machines.

So, what has happened at Rosebud and what has happened at Cheyenne River, we want to maintain our jurisdiction, including Duro jurisdiction. So, they have given us half the machines, 120 machines for a tribe of 12,000 members.

Mr. RICHARDSON. So, what you are saying is that, if a certain tribe limits the number of slot machines, then they waive their Duro jurisdiction—is that what you are saying?

Mr. VAN NORMAN. What I am saying is, yes, they are—in the gaming area, they are trading off Duro jurisdiction—see, they compacted to take criminal jurisdiction over non-member Indians at the Flandreau Sioux Tribe, and so, in that initial compact, what they said, we are not going to vary any of this, regardless of your jurisdictional history, unless you give something up. What they said is give up half your machines, give up half your opportunity for economic development to maintain your government integrity. We could not figure out a rationale either.

Mr. RICHARDSON. The gentleman from South Dakota.

Mr. JOHNSON. Well, we do have a statement from the Attorney General's office, but I regret that the State did not choose to play a more active role in this hearing, because I think their firsthand participation here would have been—I think would have been of interest to the committee, but we will follow up on those issues.

Let me ask, I suppose, Mr. Archambeau in particular, but any other members of the panel, whether you have any observations to share with us about your experience with the National Indian Gaming Commission's oversight on the Fort Randall casino here and gaming, in general, whether you think it is adequate, whether you think it is appropriate, and what that relationship has been.

Mr. ARCHAMBEAU. Well, my experience with the National Indian Gaming Commission has been very limited. It has taken so long for them to get organized—it has taken them in excess of four years to become fully staffed and organized, so their involvement in the Fort Randall casino has been limited to one field representative coming down here and doing a questionnaire with our Gaming Commission. We have sent several issues to their office and received no responses from them. They have been busy developing regulation.



The regulation, as you know, is limited to Class II gaming operations and have some approval of the Class III, the contracts and the compacts and the ordinances. Other than that, they do have a background investigation procedure for fingerprint cards, but as far as their involvement in oversight of Class III or Class II, it has been very minimal, at best.

Mr. JOHNSON. Would you outline how well staffed and what all is your Gaming Commission involved in? How successful has that operation been, in your view?

Mr. ARCHAMBEAU. Well, according to IGRA, primary regulation is delegated to tribal government. What our tribal government has done was adopted a gaming ordinance which develops a Gaming Commission separate from our Business Claims Committee and our Counsel, General Counsel.

That ordinance gives the Gaming Commission a lot of regulatory authority separating the powers and allows us to regulate gaming without interference politically, and what we have done is, through our compacting, adopted regulations as least as stringent as the State of South Dakota.

We felt it was in our best interests to have regulation that is at least as stringent as the State of South Dakota, if not more stringent. We want to protect our customers, our assets just as much as any other legitimate government.

Mr. JOHNSON. There has been some criticism from the Inspector General's office relative to the lack of BIA supervision over Indian gaming contracts and some loss of Indian money to the tribes, not in South Dakota but in other states, again a reflection of the slowness on the part of the development of that National Indian Gaming Commission operation.

Let me ask the members of this panel, in general—because a lot of the reason we are here is the futility of past—other efforts to develop economic activities on our reservations, and I have worked with all of your tribes, and I know how difficult and frustrating that has been, but I wonder if you would share with us, particularly Chairman Drapeau and Schumacher but others, as well, what have you done to try to bring other kinds of businesses and economic activities to the reservation and what has been the track record, by and large, of those efforts?

Mr. SCHUMACHER. Mr. Chairman, in Flandreau, the gaming ordinances have allowed to, first of all, take control of our other resources. Our land and our people are our resources.

Up until the time that the casino started generating revenues, we would lease our land out to the non-Indian, and we would get whatever the going rate was, you know, to use the land. We have, since then, begun to develop our own lands, and we have gotten into a cattle program, we have gotten into a hog operation to best utilize all those resources.

All our people are working. We are able to use all those resources that we could not use before. Whereas they were totally dependent before, now we are become independent as a result of those operations.

Mr. JOHNSON. Were you able to attract any kind of businesses prior to Indian gaming in Flandreau to speak of?

Mr. SCHUMACHER. Before gaming, the only business that we had on the reservation was the motel, which is a successful operation, but this is allowing us to bring in more businesses.

Due to the gaming ordinance, we were able to build and operate a store which far surpassed any expectation of the local bank in town, and so, we are doing very well at that.

We also have doubled the size of the reservation due to gaming revenues and the land available to us, because we were a small checkerboard reservation.

Mr. JOHNSON. For those of you who are looking at development of casinos, what has your experience been with securing the financing necessary to develop those casinos, or those of you who, in fact, both at Yankton and at Flandreau, who have had success, how were you able to put the money together in the first place? How responsive has been the commercial banking sector, and what kind of success have you seen in this regard?

Mr. DRAPEAU. The Yankton Sioux Tribe did not really have a problem getting the capital to start up. Initially, there was a management group who assisted a great deal in securing the funds for this.

I am glad you asked the question, because in other areas—I am a strong believer in private enterprise. I believe that the Tribe, for years, has tried various businesses, etcetera, all to no avail, and I often wonder why that is.

If we look around us, it is primarily an agricultural community. I think agriculture is a gamble in and of itself.

I have to look at our natural resources, just what we have in this area that we could capitalize on. I see the hunting and fishing has great potential, but more importantly, I see American Indians, ourselves. We have to take a lead role.

If we want to be self-determined, we ourselves must write our own plans, develop our own programs based upon our own culture. I think it is much too easy to hold reservations up to urban areas and try to match them and say why is it so successful over here and why not on the reservation?

I am a firm believer that we have to progress at our own pace. When the Yankton Sioux is ready for a Taj Mahal, we will build a Taj Mahal, but not at somebody else's pace.

In other areas, as part of a spinoff from this casino, it is not a direct spinoff, but we have the school at Marty, the Marty Indian School, which for years now has been trying to construct a new school. There is going to be jobs there available, however seasonal that may be. There has been a new Bureau of Indian Affairs building in Wagner.

At present, we are working with the Farmers Home Administration for the construction of 30 units over the next three years, housing. There is a severe shortage here.

All in all, I think that the answer to economic development here is for the Indian people to develop things at our own pace and that is uniquely ours.

Mr. SCHUMACHER. Could I address that question, too?

Mr. JOHNSON. Yes.

Mr. SCHUMACHER. Flandreau had to. When we started out, when we first opened our casino, we did not have the funding to do that.



So, we did have to go to outside sources to get the capitalization to begin the casino.

We were fortunate in that we had a building available to do that, through—that was available because of another failed economic endeavor, but to get the operation up and running, we did have to go to an outside investor and management, and that turned out to be not a good deal at all, which led to our second management relationship, and that was a 60/40 contract, and under the IGRA, to get 60/40, they have to go in and show that, first of all, they are putting a lot of money into the operation and, second of all, that there is a lot of risk, and it turned out the truth was there was neither. There was not that much money put into it, it was all on credit, and the risk was not there. From day one, it started making money. So, we began to get educated in the whole process, and our people began to do the management, and we began to learn that.

So, we are currently in a management relationship that is more of an employee relationship, and we have taken control, more or less, of our own destiny because of the revenues of the casino.

I think one of the worst mistakes that the government made is in their decision to not let the Bureau of Indian Affairs guarantee loans for tribes to do that kind of development. It forces them to go to these outside sources and get these outrageous fees. They have no choice. Where else are they going to go?

When we first opened the casino, it was a gamble and banks were not interested and nobody was interested. Now a lot of people are interested. A lot of people are knocking on the door, and there are funds available to do that, and Indian tribes—and I can only speak for ourselves—are getting very educated as to how that comes about.

Mr. JOHNSON. Mr. Lunderman?

Mr. LUNDERMAN. Thank you.

At Rosebud, like I said earlier, we are just getting into the ball game here. We have a management group that is comprised of local enrolled tribal members, and they have the necessary financing to capitalize this project, and I think it is real important that that be noted, that they are tribal members, because that will dispel a lot of the fears and a lot of the myths about the management firms ripping off the Tribe.

As tribal members, I think, you know, they have a lot more than money at stake. They have their personal integrity, they have the integrity of their families, and if they do not act in a professional manner with the Tribe, they probably would face exclusion, you know, and their families' futures—you know, their children would not be allowed to come back to the reservation, probably. So, it is a pretty serious thing.

So, I think that is real important in our situation, and our efforts at economic development are just probably like every place else. It hinges on the Bureau programs, HUD programs, a few tribal programs, and historically, we have not had access to banks to finance projects.

I think we are pretty much aware of the situation with the state bank in Martin, and those similar things happened in Mission, South Dakota, also, with the only bank on the Rosebud reservation. The only thing is they did not get caught. In the last 10 or 15

years, that has changed, but in 15 years, compared to a 500-year relationship, you know, that is very minimal.

So, we have the capability, we have the human resources. We have a university there, probably the leading Indian university in the United States, and our own tribal members are going to school there. We are turning out people who are capable. We can manage our own affairs. We do not need anybody to manage them for us anymore. In the next few years, as people graduate, we need jobs, and gaming is going to provide us with that opportunity.

We talk about the saturation point of gaming. I do not know if that is really realistic for Indian gaming. As an industry worldwide, Indian gaming was less than half of 1 percent of that whole industry. Certainly, the whole industry grew by about 1 percent, and maybe, as an industry as a whole, it may be saturated, but there still is a tremendous amount of room for Indian gaming to grow and develop within that industry. So, I do not think Indian gaming is anywhere near that saturation point and will not be for many years if we are allowed to compete, and that is the name of the game.

It seems like, now, everybody is afraid to compete with Indian gaming, but in a free enterprise system, isn't that what it is? Isn't it competition? We would like to be able to compete.

The other thing is we always have to qualify what we do. I was reading in the Sioux Falls Leader last night the article about the new venture on the North Dakota side, and they make note that there is going to be about 600 jobs there, or more, and some of them will be for white people. Why do we always have to qualify that way to justify what we do, our ventures? Indian gaming is for Indian people. We should not have to justify it.

To me, the classic example of what Indian gaming is is right here in this facility there is a young man by the name of Kenny Hart, and I had the pleasure and the opportunity to coach this young man in high school in Minneapolis. He is about 20 years old, and he did not come from a rich family. He lived not in an affluent neighborhood in Minneapolis, and he had contact with a lot of gangs and gang activity, and he is here working at this facility.

When I came here a year ago, he was a dishwasher. I seen him last night, and he is assisting with the seating of people in the restaurant, and I talked to him for about 5 or 10 minutes there, and he was telling me what he is doing. He is real proud of himself. He is proud of what he is doing. He bought his first car, and I see this young man taking control of his life.

To me, that is what Indian gaming is, and the opponents, you know, they do not have anywhere near the information they need to be talking about Indian gaming the way they do, because they do not see these things. They are not here. It is strictly from a capitalistic point of view, and that is the problem.

You must be able to differentiate between the ideologies. Capitalism in the non-Indian gaming world means one person, whether it be a single proprietorship or a corporate person, benefits. In Indian gaming, a legitimate tribal government profits.

Mr. JOHNSON. Let me make kind of a concluding—more a comment than a question, because I know that Chairman Richardson

has questions he has, and we have another panel that we need to proceed to.

I appreciate the insights here, and I think a good point is raised, as well, by you, Mr. Lunderman and Mr. Van Norman, relative to our compact negotiation experience and what we might do and what we might be thinking of in terms of Federal legislation, recognizing at the same time that the existing Indian Gaming Act is an uncomfortable compromise.

There are those who would like the state to have far more jurisdiction than they currently have, and there are those who would like the state to have no jurisdiction, complicated further by the presence of powerful interests in Washington from the Nevada and the Atlantic City gaming interests that, frankly, do not have Indian gaming at heart either, and so, if we are to open this issue up, despite the fact that the status quo is sort of an uncomfortable balance both in terms of how it is implemented and philosophically, if the issue is opened up, it had best be done with some caution, because we could do worse from everyone's perspective, and so, try to improve things, yes, but in the meantime, be aware of the complications that are potential for us there, and I think that the experience in terms of negotiating with the states have been a real mixed bag all around the country.

There have been some instances where it has gone quite well, there have been others where it has been terrible, and there are a lot of factors that go into that, but I appreciate your observations on your own experiences. I think it is related somewhat to the fact that many of our largest and most impoverished tribes in America are also the most isolated and the most—face the greatest challenges in terms of taking full advantage of gaming without some particular cooperation in terms of securing those compacts, and I think that is very true.

Mr. Chairman, I yield back to you.

Mr. RICHARDSON. Thank you very much.

Let me turn to President Schumacher. You brought two economists with you.

Mr. SCHUMACHER. One economist and the Chairman of our Gaming Commission.

Mr. RICHARDSON. Okay. Let me first ask the economist, Mr. Edinburn—

Mr. EDINBURN. Educator.

Mr. RICHARDSON. Educator. Let me ask you a question on the relationship between gaming and economic development here in South Dakota.

As you can tell, we have been asking questions about diversification of—other investment here, tax incentives. We have tried federally to try to stimulate reservation economies. Discuss for us the relationship between gaming and economic development on a reservation.

Mr. EDINBURN. Well, I would like to preface anything I say with the comment that I hear with all of the expressions that we have heard today.

As an educator, I see human resource development as the forefront of what we are talking about. I think business communities tend to see business as the forefront and human resource develop-



ment as a side benefit or residual benefit, and I really hear all these gentlemen here today talking about human resource development, the ability of people to help themselves, and I think, in and of itself, encapsulates, to me, what has happened with this process.

In regard to what has happened, I can speak from, you know, what I have done and what I have looked at in regard to Flandreau, and I can see evidence of things that are really happening in regard to that relative to the business side, but I cannot reiterate enough what President Schumacher has said about the people, the upbeat, the happiness, the competence, the confidence, the commitment of the people, because with confidence, competent, committed, and excited people in the pursuit of happiness, which is what our country is all about, I think, if we look at it from an upbeat process, we are going to have Indian people taking charge of their own life and focusing on growth that really is unlimited in this process, and I think it would be serious to take that away at this point, the start that has happened.

Now, I do not know if I am focusing on your question.

Mr. RICHARDSON. No, you are.

Mr. EDINBURN. As an educator of 37 years in teaching, my whole focus in life is human resource development, because I believe in the potential of humans to become all that they can become, and I see the money and the economic process as just a side benefit here, and I think that is really what I am hearing here, in simple terms.

Mr. RICHARDSON. Mr. Jones, do you want to add anything?

Mr. JONES. The thing that intrigues me is that we set up our Gaming Commission sooner than the National Commission. We have already had hearings on ownership and management. We have had hearings on key employees. We have gone through the gamut, and we have just gone ahead.

I have been very fortunate—and I have to give a lot of credit to my Tribal Council. They have stayed completely out of the political area of it.

Mr. RICHARDSON. Let me ask Chairman Drapeau and President Schumacher—you both mentioned the current negotiations that are taking place mainly by our colleagues in the Senate over the Indian Gaming Regulatory Act, meetings with governors, meetings with attorney generals, with various other entities, and I heard you basically state that you have attended some of those meetings and hearings.

In the House, we have not participated in those discussions, the reason being I share the view of Mr. Jones that I think, if we are going to proceed, we have to proceed with caution, and I suspect what we will do is look at what the Senate has arrived at, but having been directly involved in the negotiations that created this Act—and although on the other side, Mr. Lunderman and Mr. Van Norman stressed a view that perhaps the Act is too discriminatory as it is—that we really are trying to achieve a balance here, but I wanted to ask both of you, as the leaders of your tribes, what should the Congress do in terms of amending the Act itself? We may be faced with that, whether it is technical amendments or whole sale amendments.

Obviously, you cannot comment until you see what the result of these negotiations are, but would you like to venture and advise us on what we in the House might be considering as we relate to this issue?

We have held extensive hearings. We are trying to get your perspective here. We have held seven hearings around the country, and we have not made a commitment to move ahead yet.

So, with that, Chairman Drapeau?

Mr. DRAPEAU. With the Indian Gaming Regulatory Act, I do have some problems with the Act itself. I do think that there should be some amendments to the Act, and those amendments—just what those amendments are, for me, is the scary part, especially in light of the fact that there is a treaty between the Yankton Sioux Tribe and the Federal Government.

I am an advocate of just bypassing states altogether in the negotiations for compacts. Why? Once again, because I have to stand on the treaties between your government and my government, and for us to have to sign a compact with the states I feel is doing nothing more than propagating this guardian ward theory, that it is like the Bureau of Indian Affairs standing over our shoulders again and telling us, even though you are 21 or 18, you are still a ward, you are incompetent of managing your own affairs, and I guess maybe, of all the good things to come about because of the Indian Gaming Regulatory Act, that would be the biggest problem that I have with it, is that it leads us to believe that we simply cannot manage our own affairs, our own businesses, but I think that the Subcommittee ought to take a good hard look at the existing casinos, because I feel that, in spite of the skepticism of critics from the east coast to the west coast, we have proven, time and time again, that we can manage a business on our own terms.

Mr. RICHARDSON. President Schumacher?

Mr. SCHUMACHER. The recommendation I would like to make, as I alluded to earlier, is this business about being in America, being in a capitalistic society, about a level playing field, about fairness, about equality. As one of the panelists said, why do we have to justify what we do? Why do we have to seek out and have hearings?

If Circus Circus wants to open a Treasure Island, they do not have to go the American public and say I want to do this because, I should be able to do this because. They do it, because of the system they operate under.

We do have a special sovereign relationship with the United States, and the United States does have obligations to the Indian people. The United States was built upon the resources that were taken from the Indian people, and that is the basis for those treaties.

If IGRA were to be amended, I would like to see it amended on the side of fairness, on the side of equality, or on the side of justice.

Given the opportunity to operate their own casinos, Indian people, I think they have proven throughout history as being survivors, as being able to adapt, able to learn, able to manage in a society, all on the freedom, the opportunity to do that on their own.

Why should the Federal Government or the State Government come in and say, look, you are a special case situation and we are going to tell you what you can and cannot do, when to the rest of

the citizenship, it says laissez faire. It says let the market determine the conditions under which you operate, let those supply-and-demand factors work, let those freedoms have their place in your operation.

So, again, without seeing any amendments or without seeing legislation, it would be hard to make a judgement whether you are for it or against it or how to change it, but if it is changed, I would like to see it changed for the better.

Mr. RICHARDSON. Mr. Lunderman and Mr. Van Norman, before I ask you questions on the Duro issue, do you want to address this issue?

Mr. VAN NORMAN. Yes, Mr. Chairman. I would like to address it kind of from a legal perspective, and I think that, when you look at Indian relations, you need to realize that, to begin with, there were relations between sovereign governments, with the Senate having the ratification power, and the House stepped in at a later point.

What we would like to deal with is Congress, and we would like to know up front what Congress is going to do. So, we do not want to have implied divestiture of sovereign powers through the Supreme Court. We do not want to have our reservations diminished by some catch phrase that none of us understood at the time. We would like to deal through expressed terms with Congress.

We recognize that the IGRA is kind of an unsettled balance. I have participated in these meetings on the Senate side, and we know there is a strong lobby against us. So, at the Cheyenne River Sioux Tribe, we do not want to see the Act opened up if it is going to result in losses for existing gaming, and we include within that tribes in Minnesota and Wisconsin.

If the Act is opened up, I think it is important to look at the thing structurally. The states have raised the 10th and 11th amendment defenses. I do not think those really have anything to do with the IGRA. Congress has plenary power in Indian affairs. If you let the states in, you had the authority over the states when they came in.

So, I think it should be clear that you want to maintain those structural relationships, and I also think it is better to go to mediation before litigation, if there is an amendment.

Mr. RICHARDSON. Mr. Lunderman?

Mr. LUNDERMAN. I believe, at Rosebud, we agree with some of the other panelists here. We would like to see the state taken out of the negotiation process, and we would like to deal with the Federal Government.

I know another casino here has gone back to the State in renegotiations and offered a revenue-sharing plan, and the Governor's office just flat turned it down, and his comment was, well, the people have spoken, making reference to the referendum last September over the Costner bill, but I guess the Governor fails to remember that the people spoke a lot louder back in 1963 or 1964, whenever it was, when South Dakota decided not to become a P.L. 280 state. I think that is a much stronger statement than the statement made in last September's referendum, and I think we also will stand on treaty obligations in our relationship with the Federal Government, and we need to keep those things clear.



Again, I would make reference to an article in our local paper about the situation up the Cheyenne River, which Mr. Van Norman is aware of, where the non-Indian citizens are petitioning the United States Congress and making reference to the Homestead Act, where they want deeded land taken out from the authority of the Tribe.

Rosebud had its boundaries diminished based on the Homestead Act, because we thought that the intent of Congress was not to diminish those boundaries. So, that is the kind of relationships that have evolved.

In this State, South Dakota has a history of being the Mississippi of the South. Its policy on racism seems to be it does not have a racial issue, because it does not have a significant Black population.

Mr. VAN NORMAN. Mr. Chairman, could I just address that for one second? I would like to say that, you know, I think that this dispute and the article in the paper, the dispute over jurisdiction, arises over a question of liquor regulation.

You can understand that, with 633-percent alcoholism deaths above the general population, we want to do something to regulate alcohol sales. We have a number of liquor stores that sell liquor on the reservation. We are not seeking to close them down. We are seeking to regulate them responsibly.

Some of the things that your State legislature has done in New Mexico to curb drunk driving—we are closing drive-up windows. We have shortened hours of operation during the school week, so people are going to go home, get their kids to school, go to work.

We have closed on Sundays, because under State law, you can open up at 7 a.m. on Sunday morning. Well, in Indian country, that means you are not going to sober up from the night before if you are a drinker, and so, we have done these things in a responsible fashion, in line with what the Surgeon General has recommended, and I think that the response is more or less the fact that people do not view Indian tribes as governments, but we are taking responsibility for our own problem, and it is a problem where fatalities have arisen from irresponsible sales up there, and we are trying to curb that.

Mr. JONES. Having been a former Tribal Chairman and Tribal Judge, what is wrong with recognizing Tribal Court? I mean, as long as Tribal Court gives due process—and that is what gaming is all about, even in regulatory due process—why can't they allow it? I will give you an example.

We have had about four or five hearings on Flandreau, and in our ordinance, it says any objection to a Commission ruling has to go through Tribal Court. It has gone to Tribal Court twice with two management firms, and they negotiated in mediation, because they did not want to go through Tribal Court, but a lot of people do not recognize this as sovereignty, because you will not let our Tribal Courts prove to you that we can give due process. I really believe that. Give us a chance, we will give you due process to everyone.

Mr. RICHARDSON. Let me just mention that we just passed the Tribal Courts bill that I sponsored and Congressman Johnson sponsored to try to get more resources plus upgrading the Tribal Courts component at the BIA. You are right, Judge. Can I call you Judge?

Mr. JONES. Well, I am retired.

Mr. RICHARDSON. Well, once a Judge, always a Judge.

Before I move ahead to the Duro issue, let me just get some statistics straight from the President of Flandreau. As I understand it, you got the first compact.

Mr. SCHUMACHER. Yes, sir.

Mr. RICHARDSON. Now, how many machines were you limited in that first compact?

Mr. SCHUMACHER. In the first compact, in the negotiations, they limited us to 180 machines.

Mr. RICHARDSON. Now, as I understand it, in subsequent negotiations, the larger tribes, like Cheyenne River and Rosebud, were also limited to 180 machines.

Mr. SCHUMACHER. In our compact, the limit was 180 machines, with the stipulation that, if we did \$85 per day per machine, net, for six months, we could increase that number of machines by 70. That took us up to the 250.

Just as a side comment on that, recently we have been able to do as much as \$500 per day per machine. Nevada averages \$90 per day per machine. Deadwood is \$50 per day per machine. Where do they get these figures to come up with these kinds of numbers? I do not understand that.

Mr. RICHARDSON. Okay, but what—what Mr. Van Norman and Mr. Lunderman have mentioned is that, if you waive your Duro jurisdiction, you get more machines. Is that basically what you are telling me?

Mr. VAN NORMAN. Yes. In the initial compact, the State asked the Flandreau Sioux Tribe to agree that the State would exercise all gaming-related jurisdiction over non-member Indians, including criminal jurisdiction, and they have a particular person in the State Attorney General's office that views Congress' Duro legislation as unconstitutional.

Now, we tried to say, well, if that is your only problem, why not just put a stipulation in there? We will exercise it unless a court tells us it is unconstitutional, and then you exercise it, and we do not have to worry about trading off machines, but they said no, if you want any difference from the Flandreau Sioux Tribe's compact—that was fair middle ground—you must give us quid pro quo; we are not going to consider the fact that you have 12,000 members and they have 500 members.

Mr. RICHARDSON. Let me then ask, Mr. Van Norman, the converse of the precedent that may have been set here. Suppose that your Tribe has a resource that the State is wanting to invest in, say mining or harvesting. Can you make an agreement with the State wherein the Tribe gets criminal jurisdiction over non-Indians?

Mr. VAN NORMAN. No.

Mr. JONES. Can I respond to that, sir?

Mr. RICHARDSON. Do you see what I am getting at?

Mr. JONES. Yes. I was in the compact negotiations. I was Secretary/Treasurer of the Tribe at the time we made the compact, and we have it all recorded and court reported that this would not affect other reservations, and it was based on—they did a lot of fighting with us over public policy, whether we could control it,

whether we could keep the mafia out. We were even told by the Governor and the Attorney General's staff that they did not want this issue, the government gave it to them. We found out later that they wanted it, but that is not important.

My issue is this: I asked the South Dakota Attorney General, when I was Judge, and I asked the U.S. Attorney, if I was to take a non-Indian and give him due process in Tribal Court, what would happen to me, and they said nothing, as long as it was fair and I could prove due process. We would probably have a big debate on legislation, but they said nothing if it was due process. Does that answer your question?

Mr. RICHARDSON. Well, it just seems to me that—I would want to hear from the Attorney General and the Governor on the State's position. I do regret that they are not here, and I think a lot of it is due because of the very quick way this hearing was scheduled, and so, I will take responsibility over that, but it is my view that a tribe should not have to cede their jurisdiction to get economic development, that your sovereignty is probably one of the most—well, is totally something that the Congress stipulated, and our Constitution very clearly stipulated the relationship between you and the Federal Government, and your sovereignty, in my judgment, anytime you deal with these issues, is paramount.

So, the staff has suggested that we deal with this legislatively or perhaps we go to the Justice Department to clarify this. I do not think it necessarily needs clarification, but this disturbs me a little bit, that we have passed a law and that it seems to have a different component when it comes to how it is applied in a variety of states.

Perhaps, in conclusion, before I turn to my colleague, Mr. Van Norman, you seem to be an attorney who has been through many of these efforts and wars. How do we deal with this problem? Is it something the Justice Department should deal with, or should we amend the Act once again that prohibits that no tribe could otherwise restrict or waive their jurisdiction, as passed by Duro, as the law that we passed?

Mr. VAN NORMAN. Well, I think it would be helpful to start out by going to the Justice Department and see what they say about the intent of the Duro legislation vis a vis the Indian Gaming Regulatory Act, and that may provide you some guidance if there is some legislation from the Senate, and I think there has been some indication of that.

I think the real problem comes down to the fact that what we are looking for in our reservations is homelands, and we are developing our tribal governance, and so, it is unfair to ask us to negotiate jurisdiction, because the State knows this. They are not necessarily going to look at jurisdiction on a public policy basis. They are looking at it as waving a red flag in front of us to get a concession on the market, and so, I think it is very unfair, and the question of substantive regulatory standards in terms of saying, you know, whether, you know, we have some electronic component that ensures a proper count on a slot machine is far different than saying that the State is going to come in and exercise jurisdiction where they never had it before.

Mr. RICHARDSON. Well, in concluding this panel, let me state that Mr. Johnson has briefed me on the very positive effects that



this casino and many others in the State have had. I think our objective here is to see if the law is working and what we need to do to improve the legislation, if at all we need to do that.

We are also interested in the economic development component: How are we going to bring more jobs to this area? I have heard about your reservation, some of the very serious economic problems. I would like to visit it, and I am sorry, in this trip, I could not do that, but clearly, we have got to deal with other incentives besides gaming, and Indian health care—our Subcommittee is going to draft the Indian health care component for the Clinton plan, and I agree that the resources in that component that has been introduced by the White House are lacking. Mr. Johnson has told me about some of the Indian Health Service proposed cuts in his State, and we are going to try to change that, but I think you have hit on some very important issues here today, and I am glad we had the range of witnesses here from tribal leaders to economists to attorneys and to a former judge.

I think, Judge, your perspective has been very valuable, because you gave us not only a historical one but a substantive one.

So, before I excuse this panel or dismiss this panel in a very positive way, I would like to see if my colleague has any concluding comments.

Mr. JOHNSON. I think the points raised are excellent. I do not think there is very much more to be added. Obviously, this is an ongoing issue we are going to have to continue to struggle with to find satisfactory resolution, and there may not be a perfect answer, but I look forward to working with you, Mr. Chairman, and with our tribal leaders in South Dakota, as well as with our State leaders.

Mr. RICHARDSON. I do hope that you stay in close touch with us as we deal with these issues, especially after Senator Inouye proceeds with his legislation, and I do want to come back and visit your reservations, but this has been one of the more valuable hearings that I have listened to around the country on this issue, and I particularly commend you. So, thank you all very much.

We will now move on to our third panel: Dr. Michael K. Madden, Professor of Economics and Assistant Dean at the University of South Dakota; Mr. Brian Drapeaux, Executive Secretary, Northern Plains Tribal Gaming Alliance; Mr. Scott Beckenbaugh, Counselor of the Federal Mediation and Conciliation Services and Alternative Dispute Resolution Coordinator for District 6 in Minneapolis; and Mr. Tim Wapato, Executive Director of the National Indian Gaming Association.

I would like to ask perhaps Mr. Johnson or his staff if we have missed anybody that perhaps has arrived that was scheduled for an earlier witness presence. I will ask Mr. Johnson to temporarily chair, and I will be right back.

Chairman Johnson.

**PANEL CONSISTING OF MICHAEL K. MADDEN, PROFESSOR OF ECONOMICS AND ASSISTANT DEAN, UNIVERSITY OF SOUTH DAKOTA; BRIAN DRAPEAUX, EXECUTIVE SECRETARY, NORTHERN PLAINS TRIBAL GAMING ALLIANCE, INC.; SCOTT BECKENBAUGH, COMMISSIONER, FEDERAL MEDIATION AND CONCILIATION SERVICES, AND ALTERNATIVE DISPUTE RESOLUTION COORDINATOR FOR DISTRICT 6 IN MINNEAPOLIS; AND, TIM WAPATO, EXECUTIVE DIRECTOR, NATIONAL INDIAN GAMING ASSOCIATION**

Mr. JOHNSON [presiding]. First of all, welcome to the congressional hearing. Your full statements are received as part of the record and will be shared with by congressional staff and all the members of the committee when we return to Washington, and you may choose to summarize your statements.

We are going to try to follow the five-minute rule just to expedite things. The chairman and I are not going to gavel anybody down, but when you do see the red light come on, be thinking about wrapping your remarks up, so that we do have some time for questions and comments in a freer flow later.

Why don't we begin with Dr. Madden, and we will proceed from there. Dr. Madden.

#### **STATEMENT OF MICHAEL K. MADDEN**

Dr. MADDEN. Thank you.

During the last nine years, I have been responsible for measuring the economic impacts of the vacation travel industry in this State, and thus, I have had a chance to track what has happened with regard to tribal casinos since 1990. The added travel spending in each of these counties where the casinos are located has been very substantial.

Prior to the time that gaming was established, all of these five counties together accounted for only \$8 million of vacation travel spending, and most of that was within Coddington County, which is Watertown, and they already had a big infrastructure to start with.

In 1993, I estimated that the vacation travel spending in these counties amounted to \$31 million. That is a 281-percent increase.

Together, these counties now account for 8 percent of tourism spending in the State, compared to about 2 percent prior to tribal gaming, and it should be mentioned that we are talking here about rural counties. This is rural economic development.

Now, this visitor spending translates into economic impacts. The spending itself does not have an economic impact until you look at the jobs and the earnings that are related to it.

There has not been a formal economic impact study for the entire industry at this point. Perhaps one will occur in the future, but these numbers that I am about to give you are based on an informal survey among the five operating tribal casinos.

Direct employment as of today in these casinos amounts to about 1,700 people, and there is a multiplier effect, a spinoff effect. If you assume that is similar to what we see in the tourism industry in general, it should add another 570 jobs in the regions. So, we have a total employment impact of 2,270.

It is also estimated that, over the five tribal casinos, 70 to 75 percent of the direct employment positions are held by Native Americans. This translates into 1,200 to 1,300 new jobs for Native Americans.

The wages and salaries associated with this employment amounts to \$25 million. It is also noteworthy that, because most regions surrounding the tribal casinos are of low population, that these are significant—that \$25 million is a significant amount of growth and income in these counties.

Non-labor operation expenditures together, as a composite, amounts to \$22 million for the five operation casinos. These are expenditures that are made by the casinos and businesses in and around the communities or the regions that they are located in.

It is also estimated that, in 1993, approximately \$9 million in tribal profits were generated. I did not have an opportunity to go through the disposition of these profits, but a lot of the profits have been plowed into infrastructure improvements, also including—or I should say related to the gambling facility itself, such as lodging, camping facilities, water and sewer, other social programs that other people are more aware of and can give you better answers on than myself.

There has also been about \$750,000 together annually in contributions that have been made to tribal and other social programs.

Now, as far as the future is concerned, there are at least three additional casinos—and we have been talking about them today, other people have—in the planning stage. You can refer to the map that I have on my exhibit as to where the original ones are and where the proposed ones are located, and if you assume that economic growth would occur in proportion to what has been demonstrated in the original five since 1990, these inferences can be drawn.

First of all, vacation travel spending will grow from \$31 million today to \$52 million. It will add employment from 2,270 to 3,770. Earnings are expected to grow from \$22 million to \$37 million.

So, I guess, in conclusion, from an economic standpoint, tribal gaming has proven to be an effective rural development tool.

The added economic activity has been distributed in the communities surrounding the casinos, producing economic vitality, which obviously would not have occurred in the absence of the tribal gaming enterprises.

I guess the other thing that those of you that are familiar with this State can see if you look at where these casinos are being developed, that almost all of them happened to be developed in regions that really need it most in the State.

Thank you.

[Prepared statement of Dr. Madden follows:]



**PRELIMINARY ESTIMATES OF ECONOMIC IMPACTS  
RELATED TO TRIBAL GAMING IN SOUTH DAKOTA**

Submitted by: Dr. Michael K. Madden

Professor of Economics, University of South Dakota

Tribal gaming commenced in South Dakota in October of 1990 with the opening of the Royal River Casino in Flandreau. Since then four additional casinos have begun operations with the latest occurring in the spring of 1993. (Refer to the accompanying state map for their respective geographical locations.)

**The Travel Industry**

During the last nine years, I have been responsible for measuring the economic impacts of the vacation travel industry throughout the state and have accordingly tracked the economic impacts of tribal casinos as they have developed since 1990. The added travel spending in each of the counties in which tribal casinos are located has been substantial. Prior to tribal gaming, aggregate travel spending in these five counties totaled about \$8 million with Codington County (Watertown) accounting for the bulk of this amount. In 1993, travel spending in these five counties amounted to about \$31 million, an increase of 281%. Together, these counties now account for nearly 8% of tourism spending in the entire state compared to about 2% prior to tribal gaming.

**Economic Impacts**

Visitor spending translates into economic impacts such as jobs and earnings. Although no formal economic impact study has been undertaken to date, preliminary discussions have begun concerning the completion of such a study in the near future. Upon the completion of this research, more precise economic estimates will be possible. The following economic impact highlights are based on an informal survey of the five operating tribal casinos.

- Direct employment in these casinos today amounts to more than 1,700. Assuming indirect employment impacts are similar to the South Dakota travel industry in general, an additional 570 jobs have been generated in the state through the multiplier effect. The total impact on employment is therefore estimated to be 2,270

- It is estimated that 70 to 75 percent of the direct employment positions are held by Native Americans. This translates into an increase of between 1,200 and 1,300 new jobs held by Native Americans in South Dakota. The remaining 25 to 30 percent of the jobs represent new employment opportunities for South Dakotans living in communities near the casino operations.
- New wages and salaries in the regions surrounding the tribal casinos are estimated to be more than \$25 million. Because most regions surrounding the tribal casinos are of low population, these added earnings have produced significant relative impacts on personal income within communities.
- Non labor operating expenditures amounts to at least \$22 million for the five operating casinos. These expenditures are relate to the required business purchases of goods and services from local and non local vendors. Examples include food and beverages, utilities and various other miscellaneous purchases.
- In addition, an undetermined amount of business activity occurs through spending by casino employees.
- It is estimated that tribal profits derived from gaming operations amounted to nearly \$9 million in 1993.
- The use of these profits vary from tribe to tribe. Some of the resources have been allocated to infrastructure improvements relating to the casinos themselves. Examples include lodging and camping facilities as well as additions to casino capacity. Other economic development programs have also been pursued. Training and educational programs for tribal members have been instituted or expanded within a number of the tribes.
- At least \$750,000 in contributions have collectively been made to tribal and other social programs. Examples include day care facilities, senior citizen programs, law enforcement and treatment centers.

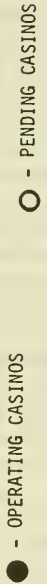
## **The Future**

There are at least three additional tribal casinos at some stage of planning in South

Dakota. (See attached map.) If economic growth occurs in proportion to what has been demonstrated since 1990, a number of inferences can be drawn. Vacation travel spending related to tribal casinos will grow from \$31 million today to \$52 million. Total employment will increase from 2,270 to 3,770 and earnings are expected to grow from \$22 million to \$37 million.

### **Conclusion**

From an economic standpoint tribal gaming has proven to be an effective rural economic development tool. The added economic activity has been distributed in the communities surrounding the casinos producing economic vitality which obviously would not have occurred in the absence of tribal gaming enterprises.



Mr. JOHNSON. Thank you, Dr. Madden.  
We will turn next to Mr. Drapeaux.

### STATEMENT OF BRIAN DRAPEAUX

Mr. DRAPEAUX. Thank you, Mr. Johnson, and I would like to thank your staff and Mr. Richardson's staff for making this all possible and keeping it happening.

I guess I have a couple of different reasons for being here. I work for the Northern Plains Tribal Gaming Alliance, but I need to preface a little bit about why I work for that Alliance.

I grew up here, up on the Yankton Reservation, since 1970, since I was five years old, and spent my life on the reservation. I went to high school in Lake Andes and then went to Dakota Wesleyan and graduated in 1988, when I moved to Alaska and taught school for four years, had a family, moved back to South Dakota for family reasons, taught in Kyle for a year.

I had an opportunity to come to a 10-year class reunion, and a friend of mine, Mr. Archambeau, who was on the earlier panel, told me about this position coming open and asked me to apply.

I really was not too impressed when I was living in Alaska about the fact that our Tribe was getting into gaming.

I thought that this was going to be one more bad endeavor that the Tribe was going to slip into, and I thought that tribes across the country were making a terrible mistake, until I came back after the casino was up and running and I saw my friends and my family, who had no jobs, who never had a prayer of getting jobs, where a high school education was not going to do them any good for any reason, started to work, started to improve their lives, started to have a future, started to have hope, and so, with those things in my mind, I quickly changed my attitude from being anti-gaming to being if this is what Indian gaming is doing for the people that I know, then I have to be for it, and not only do I have to be for it, but I was more than willing to do whatever is possible to promote Indian gaming and the benefits of Indian gaming in the State of South Dakota and across the country.

I guess, to me, in looking at the effects of Indian gaming and what the Flandreau casino, particularly, has had on the Yankton Sioux people is hope, and I could—you know, I do have some numbers, and I know that it is a blur up to this point, but you know, those numbers have faces, and the faces, you know, for me, are my friends and my family, and so, when I talk about Indian gaming, it is a very emotional thing for me because of who it is affecting, and so, this means more to me than anyone could ever know, possibly, but to me, Indian gaming is about life and it is about relationships, and we heard in an earlier panel where a gentleman talked about making the field even, the playing field more even, and I believe that that is what Indian gaming is doing for the Yankton Sioux Tribe, particularly.

For the first time in history, the Yankton Sioux Tribe and the Flandreau casino are represented on local Chamber of Commerce boards. We are in constant contact with local legislators.

The surrounding non-Indian communities are approaching the Tribe with projects and joint development projects, and they are reaching their hand out for the first time and changing their atti-



tudes, and so, you know, Governor Mickelson started reconciliation back in 1990, and to me, Indian gaming is the essence of reconciliation, because what essentially is happening is that you are having people who have lived next to each other their whole lives but never knew each other, have preconceived ideas about each other, and now those ideas and those attitudes and those prejudices are changing because of this facility, and that is bringing people together on an atmosphere of fun and an atmosphere of work, and to me, that is what it is all about.

It is about human beings and about making changes, substantial changes, not just the numbers that we are hearing.

I guess a couple of questions were raised earlier about what is being done as far as further development. I have some pictures here that the Yankton Sioux Tribe and their development has.

We purchased a water tower for infrastructure needs.

Also, we have a lagoon out back here that was built to handle this facility, plus it is also set up to handle other housing that will be going up around here.

The Yankton Sioux Tribe has built a new BIA building which they now rent to the BIA, and so, when that eventually is paid off, then the Bureau will then be paying us rent on that building.

We have developed an alcohol treatment center. This was our old alcohol treatment center, which is still standing next to our new one, because our new one is not completed yet, and so, here is a picture of our new facility, and they are located in Lake Andes.

Now, that facility will need to be fully staffed with doctors, nurses, counselors, et cetera, and so, we are very proud of the fact of our development.

Mr. JOHNSON. These are done with gaming revenues, by and large.

Mr. DRAPEAUX. Yes, and the development of the gaming revenues that were going to be generated.

I will stop there, I guess. Thank you.

[Prepared statement of Mr. Drapeaux follows:]

SUBCOMMITTEE ON  
NATIVE AMERICAN AFFAIRS

Oversight Hearing on the  
Indian Gaming Regulatory Act, P.L. 100-497:  
The Economic Impact in South Dakota

April 22, 1994

Submitted By:

Brian Drapeaux, Executive Secretary,  
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Submitted by: Brian Drapeaux, Executive Secretary,  
Northern Plains Tribal Gaming Alliance

Tribal casinos in the State of South Dakota are helping Indians and non-Indians alike. Combined, Tribal Government Gaming has directly created more than 1,700 taxpaying jobs and an untold amount of new jobs dealing with the services to the Casinos. These jobs are held by non-Indians and Indians alike and probably the most important aspect of these jobs is they were created in areas of chronic economic depression and unemployment.

These jobs have not cost the state of South Dakota any money to create or maintain but the State benefits directly by decreased unemployment and welfare rolls, and drastic increases in sales tax revenue in counties that have Tribal Gaming facilities located in them.

Increase in sales tax dollars have been quite substantial in four counties in which Tribal Gaming facilities are located. Charles Mix County has seen an increase from \$2,412,645.00 in 1990, to \$6,306,597.00 in 1993, a difference of approximately 3.9 million dollars, Moody County has seen an increase from \$491,790.00 in 1990 to \$4,712,429.00 in 1993, a difference of over 4.2 million dollars and Codington County has seen an increase from \$7,866,184.00 in 1990 to \$13,125,165.00 in 1993, an increase of over 5.2 million dollars, Lyman County has seen an increase from \$2,798,523.00 in 1990 to \$5,771,688.00 in 1993, an increase of over 2.9 million dollars.

Tribal casino's are already in the process of doing right now, what the State of South Dakota is planning to do with the ideas of destination resorts, increase visitors and visitor spending, without any financial assistance from taxpayer dollars. Where the State government plans to spend substantial amounts of taxpayer monies to copy and duplicate the atmosphere and the success of Tribal Casinos, instead of embracing them openly as an asset to the state and supporting their growth with positive policies or legislation. Again, let's emphasize the fact that Tribal Casinos were created by a partnership between tribes and individual capital investors. This being a goal of every city and community, to have outside monies come in and invest their dollars in local economies and thus in the future of that community, tribe or state. Solidifying the future with jobs, growth and development. With this perfect type of investment in the making across the state, on Indian reservations, and NOT costing the State any sort of investment except support, how can there be any question to the impact Tribal Gaming is having on Tribal peoples.

This is why it is so difficult to understand the reasoning behind the State Governments policies in limiting Tribal Gaming facilities to a certain number of machines, when we as Tribal people and governments, finally, after one-hundred years of destitution, poverty and hopelessness are doing what non-Indians have asked us to do and that is to, "quit relying on the Federal Government for hand outs", "get off welfare", and "do something positive for yourself."

Now, with Gaming as the only enterprise that has worked to this magnitude, we are again, being forced, not asked, by State and Federal Governments to limit or not have the opportunity to compact for a gaming facility. The resistance to Tribal Gaming as I see it, is not about people being concerned of the welfare and the living conditions of Native Americans in the United States but instead about wealth and the distribution of that wealth. State and Federal Governments are being bombarded by those who fear some sort of financial loss or the appearance of the loss of power over Tribal governments and their people.

All gaming proceeds are required by federal law to go to the tribal government to help fund economic development on the reservation and provide for the welfare of tribal members. Proceeds are being used to build roads, houses, sewer and water systems, clinics, schools, addiction treatment centers, and to establish education and social service programs.

Contrary to popular belief, Indian people do pay Federal Income, FICA and Social Security taxes. Indian home owners, also pay property taxes. Only a percentage of Indians who live and work on the reservation are exempt from paying property taxes. Like everyone else in the state, Indians pay sales taxes on all goods purchased off the reservation. This percentage being near 99 percent, because tribal governments do not own grocery stores, clothing or other types of goods and services stores. However, as federally recognized sovereign governments, tribes do not have to pay taxes on their revenues to any other governments.

Gaming is a precious resource to tribes, one they rely on to feed, clothe, house and educate their people and they would not let it be ruined by criminals, therefore, tribes spend hundreds of thousands of dollars on casino security and surveillance systems. Also, tribes have passed ordinances relating to financial accountability to protect it from internal and external criminal activity. It is known that Tribal casinos are among the most heavily regulated forms of gambling in the United States. Tribal casinos face regulations from their tribes and states as well as at the federal level from the National Indian Gaming Commission, the Interior Department and the Justice Department.

Tribal government gaming creates jobs, increases economic activity and generates tax revenue both on and off the reservation. Tribes have spent millions of dollars for construction. In addition, they spend many more millions per year for goods and services-almost all locally.

More than two hundred years of federal government programs have failed to provide Indian people with a means of self-sufficiency, so now is the time for tribal governments to take matters back into their own hands and for Native American People across the country to be given this opportunity because Tribal government gaming is the only economic development tool that has ever consistently worked on reservations. Now, many tribes are using proceeds from gaming to diversify their economic base and reduce their reliance on federal monies and to taste true self-determination.



### Yankton Sioux Tribal Gaming Operations

- \* There are 654 people employed by the Fort Randall Casino, 66 percent or 432, are Native American; 34 percent, or 222, are non-Indian.
- \* The Fort Randall Casino has an annual payroll of over \$7.3 million and generates over \$600,000 in federal taxes.
- \* Total expenses of the casino (excluding payroll) from Oct.1992-Sept.1993 was over \$12.4 million.
- \* Spends \$275,000 a year on employee insurance alone.
- \* In 1991, the Fort Randall Casino donated \$5,000 to each schools Indian Education Committee, Andes Central HS, Wagner HS, Marty Indian School and Zenith Alternative HS, to be spent as each committee saw fit.
- \* The elimination of welfare payments to families on the reservation and many more in surrounding communities by taking people off welfare rolls and putting them on the payrolls.
- \* Development of a 24 hour, state certified daycare, in Lake Andes, South Dakota. Creating training and at least 20 new jobs.
- \* Construction of Culturally based Addiction Treatment Center in Lake Andes, South Dakota. Which needs full professional staff of doctors, nurses, psychologists, counselors and other support staff.
- \* Construction of a Bureau of Indian Affairs Building in Wagner, South Dakota, generating new revenue for the future.
- \* Establishment of Special Revenue Accounts including: Education, Economic Development, Elderly Programs, Land Acquisition, Health and Social Services, and Tribal Government.
- \* Donated \$12,000 to Charles Mix County law enforcement agencies.
- \* Made other donation to local and regional charities totaling, \$45,000, including \$5,000 to Red Cross for state flood victims.
- \* Construction of a lagoon and purchase of a watertower, which are set up to accommodate future housing needs.
- \* Establishment of an Intern Program, young tribal members receiving on the job management training, plus taking 6 hours of college courses per semester, working toward degrees.
- \* Construction of new homes for tribal members returning to the reservation to work.
- \* Giving matching funds to Charles Mix County for road improvement.
- \* Spending \$300,000 in construction this year for expansion.
- \* \$34,000 on continuing education and training for casino employees.
- \* Over \$6 million in jackpots paid out from Oct.1992-Sept.1993.

## Lower Brule Sioux Gaming Operations

- \* There are 171 people employed by the Golden Buffalo Casino, of this amount 145 or 85% are Native American and 26 or 15% are Non-native American.
- \* The Casino's gross annual income is approximately \$1.9 million dollars.
- \* The Casino's total annual expenses are approximately \$1.6 million dollars.
- \* Currently, employee benefits include paid vacations and health and life insurance which is paid entirely by the Casino.
- \* The Casino donated approximately \$10,000.00 this year to various projects and programs through out the community, these include: Newspapers in Education, local clubs, as well as the High School, Save the Teen Program and the Elementary School, Save the Child Program.
- \* In December of 1992, the construction of 1,100 square foot Bingo/Banquet Hall and executive offices were completed at a cost of \$85,000.00.
- \* A 38 room motel next to the Casino and a 75 pad RV Park located next to Lake Sharp will begin construction in December of 1993, with a cost of \$800,000.00.
- \* The addition of the motel and RV Park, will create 10-15 new jobs to local residents and will provide approximately \$169,000.00 in additional payroll to local communities.
- \* The Golden Buffalo Casino has paid out over \$1.2 million in Jackpots since March of 1992.
- \* The Casino has paid approximately \$250,000.00 in profit to the Lower Brule Sioux Tribe's General Fund which has allowed the Tribal Government to:
  1. Provide an additional \$15,000.00 to the Elderly program.
  2. Provide a \$30,000.00 Grant to start the Lower Brule Community College.
  3. Provide \$72,000.00 in payroll to create 10-15 jobs, for a year around work crew, to clean up and beautify the Community.

## Crow Creek Sioux Tribal Gaming Operations

- \* There are 141 people employed by the Lode Star Casino, 91 percent or 128 are Native American and 9 percent or 13 are non-Indian.
- \* Projected gross annual payroll for the Lode Star Casino is over 1.1 million dollars, in 1993.
- \* Total expenses for the casino, excluding payroll, was \$1,027,800.00
- \* Employee benefits include: \$20,000 Life insurance and LTD paid in full by the casino, Health Insurance-fifty percent is paid by the casino, Priority One Resources-professional counseling services, Employee of the Month recognition and Perfect Attendance incentives.
- \* Donations and community activities sponsored by the casino, in the amount of \$10,746.00
- \* Total jackpots paid out for the year ending September 30, 1993 was \$674,603.00
- \* This data was supplied by the South Dakota Job Service:
  1. Since the Lode Star Casino opened on May 7, 1993, 27 AFDC recipients have had their benefits reduced or ended because of gainful employment by the Casino. Sixty percent of AFDC participants in the county are from the Fort Thompson area.
  2. The benefits of forty-four people who were receiving food stamps were closed due to employment created by the Lode Star Casino.
  3. Recipients from the local Food pantry have decreased from 148 families to 36 families since the casino opened.

Mr. RICHARDSON [Presiding]. I want to add a special thanks to Brian Drapeaux for his assistance in putting this hearing together and for converting this—formerly a bingo hall into a Congressional hearing room.

Brian, we want to thank you. The staff is very grateful for your help in putting everything together very rapidly this hearing.

I also want to announce that the Yankton Sioux Tribe has asked me and Congressman Johnson to announce that a luncheon will follow this hearing and that the audience—just the audience, not the entire casino—is invited, compliments of the Yankton Sioux Tribe. So, please stick around, and you will get a chance to visit all of us at this luncheon.

So, with that, Mr. Scott Beckenbaugh, the Counselor, Federal Mediation Conciliation Services, Alternative Dispute Resolution Coordinator for District 6 in Minneapolis. Mr. Beckenbaugh, we need you in the Congress, also.

### STATEMENT OF SCOTT BECKENBAUGH

Mr. BECKENBAUGH. I was just going to say I am a typical Federal employee in that I have a lot of titles and not a lot of authority, and I need to correct one thing. I am not a counselor, although some people would say I am. My actual title is I am a Commissioner with the Federal Mediation and Conciliation Service.

First of all, I want to take the opportunity to thank Chairman Richardson and Congressman Johnson and the distinguished staff for the Subcommittee on Native American Affairs for the opportunity to speak today.

I also wish to convey the gratitude of the Director of the Federal Mediation and Conciliation Service, John Calhoun Wells; our Deputy Director, Floyd Wood; General Counsel Eileen Hoffman; and my boss, District Director, Marleen Labinski.

The Federal Mediation and Conciliation Service is the oldest and largest mediation service in the world. We are also one of the smallest autonomous agencies in the Federal Government.

We were created in 1947 as a result of the Taft-Hartley amendments to the National Labor Relations Act. By largest—we have 210 field mediators around the country in 78 offices divided into 9 districts. I am one of 15 Federal mediators in the Minnesota district, which services western Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, and Nebraska.

As I mentioned, our primary jurisdiction is in labor management: contract negotiations, union employers. That is what we used to refer to as our business.

With the passage of the Administrative Dispute Resolution Act in 1990 and the Regulatory Negotiation Act of 1990, the jurisdiction of the Federal Mediation and Conciliation Service has been expanded in non-labor management arenas, and while I will say we have statutory authorization to provide alternative dispute resolution services in non-labor management arenas, we do lack budgetary authorization.

So, while those services are provided in the labor management arena free of charge to the parties who utilize our services, we are required to request reimbursement for those services that are provided in non-labor management arenas.



I talked about the idea of what we do, and basically, if I look at myself as the Alternative Dispute Resolution Coordinator for the Minneapolis district, it is basically that I coordinate the alternative dispute resolution services that are provided by the service in this geographic region.

In terms of those services and the kinds of things we provide, I guess my primary role is that of a mediator, and I want to distinguish between that role as a mediator and one of an arbitrator or some other binding party.

I happen to be very fortunate to have a position where I can look in front of a group of people and say I am from the Federal Government and I am here to help and not have my tongue firmly planted in my cheek, because we are a non-regulatory, non-enforcement agency.

The utilization of our services is voluntary by the parties. So, thus, when I am involved in a situation, it is because the parties want me there.

I cannot make anybody do anything as a mediator. I am strictly there to assist them, and I am firmly committed, as is our agency, to the voluntary resolution, the empowerment of parties to negotiate their own solutions to their conflicts and encouraging them to do so.

In the ADR arena, the kinds of services that we provide are in mediation, where a commissioner would actually serve as a direct facilitator or mediator in an ongoing dispute.

We will also provide consultation services to parties who are seeking to set up dispute resolution systems.

We will also provide systems design for people who are interested in setting up ADR systems as to what might be most beneficial to them, and probably our most expansive area in alternative dispute resolution services is in the area of education and training, where we will provide people with training in mediation skills. We will mediate ADR processes for them.

We will train them in non-adversarial negotiation processes.

As I listen to people talk about the process of negotiation, it seems we talk about power-based systems of proposals and counter-proposals and compromise, and we are seeing a new—certainly, in the private sector, with labor and management in our country, and in the Federal sector, we are seeing people turn to non-adversarial processes of negotiation.

We are trained to train people in those processes, as well as to facilitate those processes.

I would note that, while our entry into ADR activities is recent in terms of broad Congressional authorization, our initial entry from 1947 actually occurred in ADR activities in 1974, and it was a Native American dispute involving the Hopi and Navajo tribes in Arizona and land-use disputes surrounding their sovereignty, and Federal mediation moved into that arena, with Congressional authorization I would add—we did not just go out and do it—and successfully mediated the resolution of those disputes.

I would also point out that our second entry in alternative dispute resolution occurred following the Hopi-Navajo land disputes and occurred here in South Dakota, with the Oglala Sioux and the Bureau of Indian Affairs instituting a request, an FMCS, in 1976—



actually, 1975—to oversee tribal elections, with the idea that a neutral, non-interested third party would be able to come in and provide services to ensure the proper conduct of the tribal elections. Two elections were conducted in 1976 under Federal mediation oversight without any significant problems.

Because of the shortness of time, I was not able to provide a prepared statement. Hopefully, I would be able to do that within the two-week time period. I have provided information to you and, of course, will be more than interested in addressing any specific questions you have with respect to services we might provide in your subject area.

[Information provided by Mr. Beckenbaugh follows:]

## **THE FEDERAL MEDIATION & CONCILIATION SERVICE**

### **ALTERNATIVE DISPUTE RESOLUTION ACTIVITY**

FMCS's involvement in Alternative Dispute Resolution (ADR) activity dates back to the early 1970's when the agency was asked to mediate a land dispute between the Navajo and Hopi Indian tribes. In the early 1980's, FMCS facilitated the first regulatory negotiations held by the Federal Aviation Administration. Regulatory negotiation activity increased throughout the decade, with FMCS involved in negotiations held by the Departments of Transportation, Agriculture and others. FMCS also began providing mediation services for Home Owner Warranty disputes and in training volunteer mediators for the Farm Credit Administration. Since the mid-1980's, FMCS's work in the ADR area has steadily expanded to include mediation in the areas of contracts, regulatory issues, EEO/workplace grievances, and environmental issues.

More recently there has been an increasing demand for our training and educational services both in EEO and workplace disputes. In response, FMCS has developed programs to assist EEO clients in mediation training and designing systems for implementing appropriate ADR processes in these areas.

In Fiscal Year 1993 FMCS's Alternative Dispute Resolution program significantly expanded due to the increased demands for ADR services throughout the Federal government and in response to President Clinton's Executive order 12871 on Labor Management Partnerships. Federal agency field offices across the country sought help from FMCS in a wide range of ADR activities. In response, FMCS developed the following services:

**Consultation** -- initial assessment of a client agency's needs.

**System Design** -- analysis of existing mechanisms and design of appropriate methods and strategies for implementing ADR

**Education/Training/Mentoring** -- programs for educating the general user of ADR services, training in mediation skills for potential mediators, and actual mentoring of mediator trainees through active cases.

**Mediation/Facilitation and Convening Services** -- FMCS is available on contract to agencies to provide mediation, facilitation and convening services for all types of disputes, depending on FMCS resource availability.

**Evaluation and Follow-up** -- Assessment of ADR programs and continuing involvement to improve ADR initiatives.

***Examples of FMCS ADR initiatives include:***

***Mediator training program*** -- In conjunction with the Administrative Conference of the United States and the Department of Health and Human Services, FMCS has developed a mediation training manual designed for widespread government use. The book includes an instructors manual, participant handouts and roleplays. The course can be taught in three, four or five days, and is designed to be taught by experienced mediators rather than trainers with no mediation experience.

***ADR Video*** -- Also in conjunction with the Administrative Conference of the United States, FMCS has produced a short, 20 minute primer video on ADR designed to acquaint audiences with the benefits of using ADR and how it is being used throughout the Federal government by many different agencies.

***Training for Labor Management Partnerships*** -- pursuant to the President's Executive order on labor/management partnerships, FMCS is developing training and other service related programs specifically geared towards the labor management community in developing and strengthening partnerships. Examples of these programs include interest based negotiations, mediation training, Partners in Change, and Relationships by Objective.

***Major ADR contracts include:***

***Department of Health and Human Services (HHS)*** -- FMCS has been under an exclusive contract with HHS to mediate age discrimination cases since 1980. During that period, FMCS mediated on average 60-80 cases per year. In FY 1991 that average nearly doubled to over 135 Cases. Age Discrimination case activity continues at a significantly higher rate than any period prior to 1991.

***Department of Education*** -- The Service has been under contract to provide mediation services for the recovery of grant funds in disputes with state school systems. Since FY 1991, thirty (30) such cases, involving million of dollars, have been mediated.

***Internal Revenue Service (IRS)*** -- The IRS has made a broad commitment to use ADR as a standard means of conducting agency business, both internally with its unions and externally, with the tax payer. As part of their long term strategy, FMCS has served as the primary consultant and contractor with their Center for Conflict Management to implement ADR processes throughout all aspects of their work. FMCS has also worked closely with the office of International Appeals to implement ADR in large tax cases.

**Office of Personnel Management (OPM)** -- FMCS has been instrumental in assisting OPM in the design, development and piloting of both its two and five day courses on ADR. The two day program is given around the country at many locations and the five day course is part of management training at the Western Management Development Center in Denver.

**Environmental Protection Agency (EPA)** -- In order to handle the increased demand for our services in convening and mediating public policy and regulatory negotiations processes. FMCS contracted with the EPA and a company named Resolve, Inc. to provide a comprehensive skills enhancement and familiarization workshop. In FY 92-93, FMCS convened and facilitated such proceedings for the Farm Credit Administration and the States of Tennessee and New York.

**Department of Transportation** -- In partnership with the Administrative Conference of the United States, FMCS has launched a major initiative to implement ADR in resolving EEO disputes. This project includes a complete systems design, mediator training and mentoring activity.

***Other agencies that have contracted for ADR services:***

Resolution Trust Corporation  
 Equal Employment Opportunity Commission  
 Federal Bureau of Investigation  
 Food and Drug Administration  
 Tennessee Valley Authority  
 Department of Labor  
 Department of Interior  
 Fish and Wildlife Service  
 Department of Energy  
 Federal Aviation Administration  
 Department of Housing and Urban Development

**Bernard E. DeLury, Director**  
**Federal Mediation and Conciliation Service**  
 2100 K Street, N.W.  
 Washington, D.C. 20427  
 (202) 653-5300

**FMCS has offices in the following locations. For further information or assistance, please call the Office of Field Services and Training at 2100 K Street, N.W., Washington, D.C. 20427, (202) 653-2055**



**DISTRICT 1, NEW YORK, NY**  
 New York, NY  
 Hempstead, NY  
 East Orange, NJ  
 Albany, NY  
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**DISTRICT 2, PHILADELPHIA, PA**  
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# Alternative Dispute Resolution

In Federal, State and Local  
Government Agencies

by

Federal Mediation and Conciliation  
Service  
Washington, D.C.

For Information Contact:

Office of Field Services and Training  
ADR Coordinator at:  
(202) 653-2055



The Federal Mediation and Conciliation Service (FMCS) is an independent agency of the Federal Government established in 1947. The Service, headquartered in Washington, D.C., has 210 mediators located in 78 field offices (divided in nine districts) across the country. FMCS is best known for its role as "Peacemaker" in collective bargaining disputes; however, its commitment to dispute resolution extends beyond the labor-management table.

The term "Alternative Dispute Resolution" (ADR) is used to describe a variety of approaches that are alternatives to courtroom litigation or agency adjudication and rulemaking. Under the Administrative Dispute Resolution Act of 1990, Public Law 101-552, FMCS was officially authorized to share its expertise in all aspects of dispute resolution with federal agencies, including third-party dispute resolution assistance, dispute resolution training for agency personnel, and consultation systems design. Additionally, FMCS consults with the Administrative Conference of the United States (ACUS) in assisting federal agencies and their designated dispute resolution specialists develop dispute resolution policies.

FMCS has become a leading authority on mediation techniques and offers mediation and facilitation services, consultation, in-house training and development programs to federal, state and local governmental bodies and agencies. All programs are facilitated by trained federal mediators and agency personnel who structure program content based on the specific needs of the parties. Among these programs and processes currently offered to improve problem solving, understanding and resolution of disputes are:

#### **ADR Mediation/Facilitation**

FMCS can offer trained mediators/facilitators to assist in resolving disputes in a variety of areas. FMCS mediators have resolved complex disputes involving environmental issues, educational grants, agriculture, age discrimination, and other ADR matters for federal, state and local agencies.

#### **Orientation To Alternative Dispute Resolution (ADR Techniques)**

A one day "awareness" workshop which explores the various ADR techniques of negotiation, mediation, fact-finding, settlement judges, facilitation, mini-trials, arbitration, negotiated rulemaking and consensual decision making. This includes a combination of lecture, discussions, exercises, and mock mediations.

#### **Specialized Training In Dispute Resolution Skills**

Programs offered by FMCS are customized to the needs of government agencies and their clients. For example, FMCS has worked with numerous federal, state, and local agencies to train their personnel in understanding the dynamics and practice of dispute resolution. These programs include:

- The differences between mediation, arbitration, counseling, adjudication, etc.
- Communication skills and how to deal with difficult people.
- Negotiation skills - Win/Win approaches.
- Mock exercises.
- Ethical concerns.
- Measures of success.

These programs, whose content can range from general to specific and typically last 1-5 days, are designed for neutrals, advocates, and those administering the particular program. Follow-up programs and resources are also available.

Successful programs have been completed with Equal Employment Opportunity Commission, Department of Health and Human Services, Department of Agriculture, Department of Education, Merit Systems Protection Board, Farmers Home Administration - Farmer Lender Program, Defense Mapping Agency, Armed Services Board of Contract Appeals, and others.

#### **Negotiated Rulemaking**

Under the "Negotiated Rulemaking Act of 1990," Public Law 101-638, FMCS has been authorized to convene and facilitate complex multi-party negotiated rulemaking procedures. As a neutral federal agency, it works with the regulatory agency involved and all the interested parties who would be covered to help produce a consensual draft rule. This rule is then sent out for public comment. FMCS has mediated rulemaking negotiations for the Federal Aviation Administration, Department of Transportation, Environmental Protection Agency, Occupational Safety and Health Administration, and Arizona State, among others.

#### **Systems Design Consultation**

FMCS mediators are available to work with governmental agencies to design systems for internal or external dispute resolution. Such work normally entails a needs assessment and diagnosis and may involve a site visit. Systems design also includes a "procedures audit" of how issues and problems are currently resolved, what options are available for improvement, and how any new program can be implemented, maintained, evaluated.

#### **Mediation In Age Discrimination Disputes**

Based upon an inter-agency agreement with the Department of Health and Human Services, FMCS offers mediation to all individuals who file complaints alleging discrimination on the basis of age in regards to any federally funded program (e.g., food stamps eligibility, public housing, education) covered by the Age Discrimination Act of 1975. When a complaint alleging age discrimination is filed with a federal agency it is forwarded to FMCS where a mediator has 60 days to assist the parties reach agreement. If no settlement is reached at the end of that period, the complaint is returned to the responsible agency for factfinding and formal enforcement proceedings.

Mr. RICHARDSON. Now we are pleased to hear from the Executive Director of the National Indian Gaming Association, Mr. Tim Wapato. Tim, go ahead.

### STATEMENT OF TIM WAPATO

Mr. WAPATO. Thank you, Mr. Chairman and Mr. Johnson, and I would like to say that I am honored to be here to once again testify before your Committee, and I, too, just came in from Albuquerque, Mr. Chairman. We did host the meeting that was held at the Sandia Bingo Palace by the Sandia Tribe, and we had over 500 people in attendance to that meeting, including some of the people in the audience and the previous people that testified. So, gaming does mean economic development, even in your State, sir.

What I would like to say is that the questions that you are dealing with here today, in Congress, and what the State of South Dakota has to deal with is really a matter of honor.

We believe that the specific aspects of negotiation of compacts under IGRA in the State of South Dakota are really, up to the present time, a matter of dishonor.

There are three items I would like to speak on in relation to the topic of this hearing, and then I could, in question-and-answer, share with you some of the things that are going on in the Senate State tribal negotiations.

First of all—and you have heard some of this—the tribes in the State of South Dakota are amongst the most poverty-stricken citizens of the United States, let alone citizens of Indian tribes. That is a fact, a statistic that cannot be questioned by anyone.

It is also a fact that Indian gaming has proven to be an economic engine and an economic driver wherever it has been established, and you only need to look to the north of you, in North Dakota, and into Minnesota to see very prime examples of what can be done with economic development.

The State of Minnesota has no restrictions on the number of machines that the tribes compact with. Consequently, over 20,000 direct jobs have been created—direct jobs have been created in casinos in Minnesota, and economic indicators and surveys show that 1.4 additional jobs are created for every job in a casino. That is over 40,000 jobs in that State.

Nationwide, we have, at the present time, created about 40,000 jobs in Indian gaming. When you apply an economic multiplier to that, we have about 96,000 jobs. An additional 56,000 have been created in services.

Tribes should not be forced to choose between their inherent sovereign rights of jurisdiction and a compact, and yet, tribes in this State have been forced to do exactly that, to trade off for more machines part of their jurisdiction, part of their sovereignty in order to satisfy economic development.

They have done it basically with a gun at their head, not because they choose to give up the jurisdiction, nor because they did not value the legislation that you were very successful in pushing through, and in fact, it was your perseverance that made that a permanent fix instead of a two-year temporary fix, and I think tribes across the nation are still thankful for that, and the tribes

of South Dakota, unfortunately, have been unable to partake of the correction of that very unfortunate Supreme Court decision.

The aspect of negotiating a lid on machines is really unheard of in negotiation or in gaming. What should drive the number of machines is the market, not some artificial barrier than you can have 250 machines. I think Mr. Van Norman and the tribal leaders have explained the difference in size and what 250 machines might mean to a tribe of 500 members and it will not mean very much at all to a tribe of 18,000 members in the way of economic development, and so, we think that that is wrong, and it is not the way that IGRA was intended to work in the negotiations.

We believe that the people of South Dakota, the general population of South Dakota, is very supportive of Indian gaming. I think you can see that strolling around this casino or strolling around any of the other casinos in South Dakota.

Most of the participants and most of the patronage for the casinos is non-Indian. They would only be in there if they are supportive of Indian gaming and what the tribes are doing. They would only be in there if they are satisfied that there is regulation, that it is a clean game, and yet, the governmental infrastructure has taken exactly the opposite stance and apply what really amounts to economic racism to their negotiation of compacts in this State.

They do it, really, to the detriment of the other citizens of South Dakota, because there comes a stage where there will not be enough tribal members to staff a casino, and the people that are hired will be—a large percentage will be non-Indian. That economic impact spreads over the general population, to the State, to the whole region, and so, we think the example in other states amply demonstrates that.

The National Indian Gaming Association just commissioned a nationwide economic impact survey. We believe that survey will be done about June 15th and will be available. We will provide it to this Committee and to other members of Congress to show what the economic impact is nationally on Indian gaming.

Lest you think that South Dakota is the only state that applies cookie-cutter approaches or has problems with negotiation of compacts, that is not entirely accurate.

South Dakota is one of the problem states, but the State of Washington and the State of Montana also apply basically cookie-cutter approaches to their compacts.

They negotiate with one tribe, and all the other tribes in the state are then stuck with that lid and that type of compact, and then there is the State of Idaho, the State of Oklahoma, the State of California, the State of Florida, the State of Texas, the State of Alabama, and the State of Nebraska refusing to negotiate with the tribes, period.

So, you have the tribes in those states being completely deprived of taking advantage of the economic benefits under IGRA, and you have the tribes in the states of South Dakota, Montana, and Washington only partially able to take advantage of the benefits of IGRA.

Thank you.

[Prepared statement of Mr. Wapato follows:]

Statement by:  
The National Indian Gaming Association

Presented by:  
 S. Timothy Wapato, Executive Director

Before:

The House Subcommittee on Native American Affairs  
 Oversight hearing Implementation of the Indian Gaming Regulatory  
 Act; The Economic Impact in South Dakota

Mr. Chairman, my name is Tim Wapato and I am the Executive Director of the National Indian Gaming Association (NIGA), representing the majority of Indian gaming tribes nationwide. I am very honored to be here before you today to present the views of the Member Tribes of NIGA for your Subcommittee's consideration.

Mr. Chairman, it is highly pertinent that your Subcommittee has selected the State of South Dakota as a location for this Field Hearing, given that the State of South Dakota provides an example of how the Indian Gaming Regulatory Act should not be working. Allow me to cite a few examples of what should not be occurring within the framework of the Act:

(1) Tribes which are among the largest within South Dakota's boundaries and the most poverty-stricken nationwide should not be given only one option for a gaming compact, a compact negotiated with a small tribe with very different economic and social needs.

(2) Tribes in some of the most poverty-stricken and destitute areas of not just South Dakota, but the entire United States, should not be forced into compacts with a limit of 180 machines, when there are thousands of machines in the high-stakes gambling city of Deadwood, South Dakota, where commercial for-profit gambling is legalized.

(3) Tribes should not be forced by the State to choose between their inherent sovereign jurisdictional governing rights and their inherent economic right to improve the lives of their members.

These are the three key issues which I wish to focus on for the purpose of this hearing, Mr. Chairman.

I. Applying One Compact to all Tribes vs. the Consideration of Tribal Social/Economic/Demographic Differences

Mr. Chairman, a few years ago the State of South Dakota concluded its first gaming compact negotiations with a Lakota Tribe in the eastern part of South Dakota. The terms of this first compact allowed the tribe to own 180 gaming devices, with a potential maximum of 250 machines if the tribe could prove economic viability. This compact became known as the 180/250 compact, which we understand has worked out reasonably well for the tribe.



Soon after the first compact was negotiated, it became apparent that the State wanted to apply a "cookie-cutter" approach to its negotiations with the remaining eight tribes across the rest of the State. The State insisted that the 180/250 compact was the rule, and refused to negotiate for higher numbers of machines. That policy is seriously flawed for several reasons. First, the first compact negotiated was with a tribe in one of the most populated areas of South Dakota, near main traffic arteries. Most tribes are much more geographically isolated, and would have great difficulty attracting customers to their reservations without added incentives in the form of more machines. Second, the first tribe is, as I mentioned, a smaller tribe in comparison with other tribes in the State. Some of the largest tribes in the United States are within the boundaries of South Dakota, with the most extensive poverty in the nation. It does not make sense to expect some of these tribes to sign compacts mirroring one negotiated with a smaller tribe with different social and economic circumstances. In addition, state imposition of a 180/250 rule does not represent true negotiations, because there are very few aspects of the compact left to negotiate if the option is "all or nothing".

Finally, South Dakota's policy puts the tribes in a very difficult issue economically, given that tribes in the neighboring states of North Dakota and Minnesota either have no limitations or very high limitations on the number of gaming devices they may own. Other states appear to have brought a better understanding to the negotiating table than South Dakota has with regard to the varying economic needs of Indian tribes. When considering the best economic tool for an Indian tribe, one would necessarily have to consider differing populations, land-bases, and other demographic differences.

In the neighboring State of Minnesota, for example, gaming compacts provide few restrictions, if any, on the number of gaming devices a tribe can operate. The number of machines on tribal casino properties in Minnesota average approximately 1000, and several tribes own more than one property. The flexibility provided through the Minnesota compacts is a primary factor in the tremendous success experienced by Minnesota tribes.

Because South Dakota has not acknowledged that different tribes should be afforded the opportunity to negotiate for compacts unique to their respective circumstances, the State is in essence relegating the Indian people in South Dakota to poverty. It will be extremely difficult, at best, for a tribe in the most rural area of the Great Plains to compete with tribes just across the border who have thousands of machines on several different properties. For example, the Pine Ridge Reservation, which has within its boundaries the poorest county nationwide, will have a very difficult time competing with its 250 machines against the Shakopee Sioux Tribe and its thousands of machines, just a few miles from downtown Minneapolis in neighboring Minnesota.



## II. Deadwood Casino Gambling vs. Tribal Economic Opportunity

Mr. Chairman, the State of South Dakota's policy of limiting tribes to a 180/250 compact is blatantly wrong on a second point. Namely, commercial for-profit gambling is legal in the city of Deadwood, South Dakota. In Deadwood there are approximately forty casinos, each with approximately 30 gaming devices. But one individual can own three properties, or approximately 90 machines. NIGA believes that the State's insistence on treating sovereign Indian Nations as if they were one or two individuals is a brutal blow to tribal self-determination and tribal sovereignty. Indian Nations are not individuals, nor are they businesses. They are sovereign governments charged with serving their tribal citizens, and for the State to treat them like anything less is an insult and harassment.

Second, the limitation of an Indian tribe spanning hundreds of miles to a maximum of 250 machines when the City of Deadwood harbors within its city limits thousands of machines and casino entertainment is economic racism. What is being offered on a platter to the non-Indian businessmen is being denied to sovereign Indian Nations. Again factoring in competition, it does not take a great deal of market research to conclude that most Indian tribes will be unable to compete with the sheer numbers of machines and casino entertainment available in Deadwood.

## III. Jurisdiction vs. Economic Survival:

Perhaps the most egregious aspect of Indian gaming in South Dakota involves a law which you are intimately familiar with, Mr. Chairman. As you will recall, in 1991 the U.S. Congress enacted one of the most monumental pieces of legislation in decades, reversing the Supreme Court's decision in Duro v. Reina. It was your legislation and your great leadership, Mr. Chairman, which were responsible for that bill passing into law.

In Duro, the Court held that Indian tribes could not exercise criminal misdemeanor jurisdiction over non-Member Indians - Indians who were not Members of the Indian tribe in question. The Duro ruling resulted in a dangerous jurisdictional void, whereby the Court had created a class of citizens over whom neither the tribes, states, nor federal government had jurisdiction over various crimes. The court itself acknowledged that void, and looked to you, the Congress, to fix the problem.

You personally answered the calls of the tribes, Mr. Chairman, by introducing H.R.971. Over the course of a fight which lasted nearly two years, H.R.971 ultimately became P.L.102-137. It is that very jurisdiction that you fought so hard for, Mr. Chairman, that the State of South Dakota is forcing tribes to either abdicate to the State or be economically penalized for retaining. This

requirement by the State may in fact be unconstitutional, because the State is forcing the tribes to abdicate jurisdiction to the State which by federal law the States are not authorized to exercise.

Essentially, NIGA understand the state policy to work in the following way: If a tribe signs it's Duro jurisdiction over to the State, the State will agree to the 180/250 compact. If the Tribe will not agree to give away the Duro jurisdiction, the State cuts the number of machines that the tribe can compact for.

For example, Duro jurisdiction over non-Member Indians is of critical importance to the Cheyenne River Sioux Tribe. Cheyenne River was not inclined to turn this jurisdiction over to South Dakota. As a result, rather than negotiating with the tribe for the 180/250 compact, the State penalized the tribe by insisting on an 85/130 compact.

With all due respect to the good people of South Dakota, this policy represents nothing short of economic blackmail. To make matters worse, it is state-sanctioned economic blackmail of the poorest people in this entire state and in the entire country.

The manner in which the State has tried to link Duro jurisdiction and Indian gaming within the compact negotiations is incomprehensible, Mr. Chairman. By the State's own admission, the two have nothing to do with each other. The State has simply taken the position that in order for a tribe to gain something more than what the State negotiated in it's first Indian gaming compact, succeeding tribe must be prepared to give something away to the State or be penalized.

A tribe's inherent right to protect and defend the public safety of tribal members is an issue which hardly belongs at the negotiating table to discuss a gaming compact. The two issues are mutually exclusive, except for the fact that both go to the very heart of tribal sovereignty.

NIGA understand that several tribes have agreed to abdicate that jurisdiction. With all due respect, Mr. Chairman, the State of South Dakota has beaten you, they've beaten the Congress, they've beaten federal law, and the tribes report that some State officials are proud of that accomplishment. Indeed, the issue of Duro jurisdiction was perhaps most heated in this very State. It was the tribes of South Dakota which fought the hardest for passage of your legislation reversing the Court's decision. While we know that most South Dakotans are fine, good people, you may remember two hearings held by the Interior Committee where the most vocal opponents of Indian tribes hailed from this very state. Unfortunately, in spite of passage of your legislation and the hard work which the South Dakota tribes put forth to help you pass H.R.971, South Dakota has found another avenue to get around

complying with what is now federal law.

From the tribal perspective, however, it is critical that you understand that these tribes made this difficult policy decision out of economic desperation, not because they do not value the Duro jurisdiction. The sad fact is that people are hungry and need jobs. If the tribes had elected instead to litigate this issue, by the time that the courts reached their decisions Indian gaming could be a thing of the past. Many South Dakota Tribes determined that they could not risk missing out on this window of opportunity provided through Indian Gaming.

It is NIGA's hope that the good people of South Dakota would recognize this policy of economic blackmail for what it is and demand that the State respect tribal sovereignty and reject this policy. Unfortunately, there are no signs that South Dakota will reverse this policy in the immediate future, because the State has won.

Therefore, NIGA respectfully requests that as Chairman of this Subcommittee you attempt to assist these tribes by formally calling into question South Dakota's policy on Duro jurisdiction through your contacts with the U.S Department of Justice. We ask that you direct federal authorities to work with the tribes and the State to clearly delineate for all concerned parties that the Duro jurisdiction is not within the purview of the State's authority.

I would like to thank you for this opportunity to testify, Mr. Chairman, and would be pleased to answer any questions at this time.

Mr. RICHARDSON. The Chair recognizes the gentleman from South Dakota.

Mr. JOHNSON. Thank you.

Dr. Madden, your figures on the economic impact of Indian gaming are impressive. I wonder, as an economist, is there a way of measuring negative economic costs of a particular industry so that you arrive at net numbers? That is, are there additional law enforcement or social problems that can somehow be measured in this context, or is it just a matter of measuring the gross dollars that come in and go out?

Dr. MADDEN. Yes, there is a way of doing that, and I have written a study for the statewide impacts of gaming—about three years I think it was done—and you always need to include a discussion of the fiscal impacts, as well, and clearly, that is one thing that needs to be studied, that there is, you know, some social cost.

Some social costs actually go down, as was mentioned here earlier in the first panel today, and I verified that also three years ago, as far as welfare and that kind of thing, but there are other costs that need to be documented, and in that way, you can come up with a net impact, I guess you could call it.

Mr. JOHNSON. Of the 1,700 that are employed in South Dakota gaming establishments, is that a full-time equivalent, or is that sort of a warm body count of people, including part-time employees and so on?

Dr. MADDEN. There would be some part-time in there. It is pretty typical in the service industries that there is—actually, a lot of people prefer to have a part-time job, because they have families, but by and large, it would be mostly full-time.

Mr. JOHNSON. Have we had enough experience yet with Indian gaming in South Dakota to see very much spinoff into non-gaming business establishments close by—restaurants, gas stations, tourist shops, things of that nature—or is that something that is only now beginning?

Dr. MADDEN. I think we are in the beginning phases of that. You know, you can see it happening with these initial five casinos. The most obvious spinoffs, of course, are lodging and dining facilities.

I can envision, for this particular casino here, that sometime there is going to be an arts-and-crafts dimension to these grounds, and I think it is just going to be a logical progression as the resources are accumulated and are available for this spinoff development. I am just sure it is going to happen like it is in other states.

Mr. JOHNSON. Do we know very much about how much of the gaming money actually comes from the tribal members themselves who are gaming?

Dr. MADDEN. You mean as far as participation?

Mr. JOHNSON. Yes, participation, or has that just not been studied very closely at this point.

Dr. MADDEN. Maybe Brian would be able to answer that, but my observation is it is very low. The people that are spending the money in the casinos are the people that are drifting in here, not the locals.

Mr. JOHNSON. All right. Very good.

Mr. Drapeaux, again, a special thanks to you for your help in putting all this together.



As I understand, even the riser here, Mr. Chairman, was constructed just to accommodate the hearing here today.

You grew up here. You have a real sense of—you have seen kids in your high school class, and some made it and some probably did not, but this has been a real revolution in terms of opportunities, you testified to.

Knowing these people who come through here, knowing their families, do you sense that there is much problem in terms of tribal members gaming away their earnings or their rent money or their food money?

Obviously, you are always going to have an occasional isolated instance, but has this been a substantial problem that you have observed?

Mr. DRAPEAUX. From what I understand, in the very beginning, when the casino first opened, the novelty of slot machines, there were some initial problems with that, but we will be going on three years in June with the Fort Randall casino, and those problems are few and far between.

Mr. JOHNSON. Most of the people who are employed at this particular casino, if they did not have this employment, would not leave this area to seek employment other places. It is sort of this or nothing? Is that sort of the reality?

Mr. DRAPEAUX. Yes. You are from South Dakota, and it is a strange phenomena, but Indian people, this is their home, this is where they are born, this is where their families were born and raised, and this is where their history is, and this is where, predominantly, they will stay, and if these jobs were not here, then I do not see a lot of people leaving, and if they did leave, they would leave for a short period and come back, such as I.

Mr. JOHNSON. It is not that there are no conflicts or tensions. That is probably always going to be the case, to some degree, but again, elaborate a bit on the relationship between tribal members and the non-Indian community.

Wagner is largely a non-Indian community. How do you see the dynamic at work there? Is it significantly improved in terms of the respect and the dignity accorded each other in both directions?

Mr. DRAPEAUX. Yes, it is, and that is the thing that most impressed me, because growing up around here, racism was always at the forefront of anything that happened, and there was always tension between tribal members, tribal governments, city councils, or whoever, local governments, and just a lack of respect for each other, basically, but what I am seeing now—and I am involved in some different aspects with the tribe voluntarily, that I am getting involved in different things that will take me outside of the gaming, that the thing that is most impressive to me is the fact that a lot of business people, especially in the surrounding communities, see what the casino is doing for them.

You talked a little bit about the spinoff of different businesses, and you know, all we have to do is look at the real estate in the area and how the town is growing and the cost of housing and how people's land properties have grown, you know, \$10,000 you can attach on to a house now, but as far as relationships are concerned, to me they are greatly improved, and even if they are behind just a smiling face and not really heartfelt, you know, as far as I am



concerned, that is a step in the right direction, and we need more of that, and I know that the sole reason is because of this facility and the fact that, you know, like I stated earlier, that we are now able to—even though I may have grown up next to a person, we never knew each other, because they lived here and I lived there, but that is all changing now, and the fact is that people are being brought together.

This place employs about 600-plus people, and about 40 percent are non-Natives, and so, you have a wide variety of people coming together having to get along, and so, you are putting a face with the race, and as we all know, that is the key to reconciliation.

Mr. JOHNSON. This has to be creating a whole new group of role models for children in the Tribe, I would think. They are seeing their fathers and their mothers and their older brothers and sisters going off to work and saving money. Are they internalizing the sense that that is the way things are supposed to be?

Mr. DRAPEAUX. You bet. To me, that is a natural process.

You know, when you grow up seeing destitution, the alcoholism and the hopelessness and listlessness and the people all around you all the time, you know, you have to pick and choose the positives, because they are very few and far between, knowing this growing up here, and so, you know, I just want to look at the audience for a second, and I see a lot of faces back there that I have known almost my whole life, and these faces—and again, I would like to congratulate—there are a lot of people who have put this thing together, and to me, the whole role model thing is—that is what it is all about.

You know, Indian gaming is about the future and is about the future of my children and my family's children and so on, and so, education is coming to the forefront, because we are going to have to become more sophisticated in the process and learning business and other spinoff—you know, as our Tribe develops and increases its economic development areas, you know, we are going to need our own people to manage these positions and work in them, and so, I am very proud to state the fact that the Yankton Sioux Tribe right now is in development of getting a Yankton Sioux Tribal Community College.

We are going with the Nebraska Indian Community College as a guide, and we are going to bring classes here, and you know, we are going to start our own educational process, and I think that that will also bring us into other relationships with surrounding communities, such as the Lake Andes and the Wagner school districts, where we have a large percentage of Native American students in those schools, and yet, we do not have 1 percent of Native teachers in those schools, and so, it is addressing—it will help us address the hiring problems that these schools are having and their philosophies about hiring Native people to teach non-Native students, and I think that it is going to bring forth a lot of issues that were discussed here, social issues and improving relationships between people.

Mr. JOHNSON. I think you have a good point, that there is nothing like a few dollars in the pocket to encourage greater respect and dignity among all the other things that need to happen.

Mr. Beckenbaugh, there are times I think we need not mediation but arbitration in Congress, but mediation would be a good start. Has your service had any experience to this date on gaming compact mediation? That would be a new enterprise for you.

Mr. BECKENBAUGH. Yes, that would clearly be a new enterprise, and one of the nice things about my job is I get to be brutally honest with everybody, because I cannot make any money doing anything, and the worst thing somebody can say to me is no or I disagree.

My experience as a mediator is that a dispute is a dispute is a dispute from a process standpoint, and my responsibility and role is to bring people together and to try and help them voluntarily resolve that dispute short of a litigious litigation process—that is why it is called alternative—and I guess I would not be troubled, personally, if the agency were to move into that direction and provide services.

Federal commissioners basically are trained conflict resolvers, and we are process oriented, and the expertise, my experience—I have mediated everything from a Farm Credit Administration regulatory negotiation, which was the shortest and most successful regulatory negotiation in the history of government—I did not know anything about the farm credit system when I walked into that.

Community disputes—we assisted in south central L.A. with the Korean-Asian community and the African-American community following the riots. We move into a lot of situations, again, that are non-labor management. So, I guess I am not troubled by that.

Obviously, the question would be Federal interest and, therefore, whether we could legitimately provide services under the Congressional jurisdiction as provided, and our General Counsel would have to answer that question.

Mr. JOHNSON. I can say, as someone who, in a former life, made his living as a small town lawyer, that I am a great believer in the mediation process. I think there is a place for litigation, but I think we have become far too litigious in our society, and I think that anytime that we can get to the core, the heart of the issue—we are doing mediation now, very successfully, in South Dakota on ag credit issues.

Unfortunately, we are going to have to educate the administration on some of the financial needs to keep that program going, but I think it has just done wonders, and we are talking about it in terms of—from medical malpractice to any number of other areas where I think we can step back from the confrontational, adversarial nature of litigation and look at other approaches, not always completely in lieu of those but certainly as an alternative option, and I am excited about greater utilization of that concept.

Mr. BECKENBAUGH. Just a couple of comments in that arena.

First of all, with respect to the farm credit system and the farm-labor mediation program, Federal Mediation and Conciliation, again an arena that—we are labor-management mediators, right? We were instrumental nationwide, when that stuff was passed, in training mediators and assisting in farm credit programs.

Second of all, with respect to the litigious nature, one of the things I did not mention was, in my past life, I was a member of

a state agency that had regulatory authority and enforcement authority. I also had a private arbitration practice. I offered well over 200 decisions in 5 years in that capacity, both as an administrative law judge and as a board member.

I will be up front with you. I never wrote a decision I thought solved anybody's problem, and as a mediator, I have the opportunity to assist parties in resolving their own problems and crafting their own solutions.

I think it is about empowerment, I think that is where government is going, I think that is where the country is going, and we want to do whatever we can to provide people that control, because that is what it is really all about.

Mr. JOHNSON. Mr. Wapato, I appreciate your leadership in the Indian Gaming Association.

To make sure that I have this straight, because you have a greater overview of Indian gaming in general and how the compact processes work from state to state, are you suggesting that you are not aware of any other state where the number of machines has been the subject of compact negotiation between the state and the tribes? Is South Dakota unique in that regard?

Mr. WAPATO. No. There are two other states. The two states are Montana and Washington, and they have followed a similar pattern as South Dakota. They negotiated with one tribe first, and that became basically the ceiling for all other tribes regardless of number of enrolled members of those tribes, proximity to population centers and those types of things, and so, those are the three states that sort of use the ceiling on number of machines. Then there are about seven or eight other states that refuse to negotiate, period.

Mr. JOHNSON. Now, you did list Nebraska. Nebraska does have some gaming, as I understand it.

Mr. WAPATO. Yes, in Nebraska, tribes have some gaming, and Iowa, but as far as compacting, they do not.

Mr. JOHNSON. I would think the refusal to negotiate at all would land the states in court and they would be in a weak position in that regard.

Mr. WAPATO. It does land them in court. Unfortunately, we are getting conflicting opinions from some of the courts, and so, we end up with—California, for instance, which landed in court, the Court decided in what happened to be the tribes' favor in California. The State still refuses to come to the table and negotiate.

We can contrast that with other states. Minnesota, Wisconsin, North Dakota have compacted. We do have 103 compacts representing 79 tribes in 20 states, and that demonstrates that, when the Act is allowed to work the way the Act was drawn up and passed, it will work.

Where state authorities, for whatever reasons in their states, refuse to come to the table or refuse to come to the table in good faith, the Act does not work, and so, what the states now, where—we have the three states that want to use limitation on machines and the seven or so states that refuse to negotiate—is where the major impetus on these Indian gaming regulation amendments is coming from, plus our normal and usual suspects out of Nevada and New Jersey.



Mr. JOHNSON. Mr. Chairman?

Mr. RICHARDSON. Dr. Madden, what do you think the future of tribal economies is here in the State of South Dakota? Would you say that gaming is now the cornerstone of the private-sector economy on the reservation here?

Dr. MADDEN. Yes. It is a cornerstone of the five tribes that have existing casinos, and I am confident that that will apply to three if not four other ones, as well.

Mr. RICHARDSON. Are there any other industries that could flourish on the reservations here?

Dr. MADDEN. Not without improvements to the infrastructure. I am a firm believer that that has been one of the big impediments to economic development in the past on reservations, is just the basic things, the education, public safety, water and sewer. These kind of infrastructure requirements are needed for general economic growth and development.

Mr. RICHARDSON. So, we have to take care of some of those problems first before we talk about tax credits and gaming.

Dr. MADDEN. Well, I think gaming is an exception to that, because the people you are serving leave. You know, they come and visit the casino, spend their money, and they go home. The demand for infrastructure is much more limited than it is for traditional economic development.

I guess what I am saying is that there is an opportunity perhaps that the profits that are generated from gaming can solve some of these infrastructure problems and thereby promote traditional economic development sometime in the future.

Mr. RICHARDSON. Mr. Beckenbaugh, could we use your services here to ease the tension between the tribes and the State on this Duro issue or the compacts? What suggestions would you make to resolve some of these gaming compact issues right here?

Mr. BECKENBAUGH. Well, I guess, in terms of utilization of our services, again there may be jurisdictional problems. That is a question, I think, that would have to go, probably, to our national office in terms of an examination there, but whether or not Federal Mediation would provide the services or assistance in training to somebody who could, I think it is clear that, where you are having state tribal disputes, Federal-state disputes, any kind of jurisdictional kinds of issues, that the full exploration of a mediated voluntary settlement is absolutely critical.

Again, in a former life, I used to be a coach and a teacher. I believe in competition, and I believe it breeds excellence, but I honestly believe, also, that when we are involved in longstanding relationships, that competitive relationships are destructive, because it builds winners and losers and is not in both parties' mutual self-interest.

Mediation could be of service. It certainly ought to be explored prior to the litigation route.

Mr. RICHARDSON. Well, you are also a politician, the way you answered that question, besides being a mediator.

Mr. BECKENBAUGH. I guess maybe that is why I am an ADR Coordinator, huh? Well, there are times, at the table, when parties will ask you, the union or the employer, am I out of line here, and you always try and stay neutral.

Mr. RICHARDSON. Tim, could you just give us a little background on how does the gaming situation here in South Dakota, the gaming—you gave some interesting statistics. For instance, you said that there are 100,000 individuals employed by gaming in the country. That is a new statistic that we have, and if you have other statistics like that that you recently have developed, direct or indirect jobs, we would like to have those for the record, but give us a perspective of South Dakota gaming as it relates to the rest of the country.

Mr. WAPATO. South Dakota gaming as it relates is artificially underdeveloped, and it is artificially underdeveloped because of the limitation on the machines that are put in the compacts by the State.

What should occur is they should negotiate in this State on the basis of what will the market bear in that particular area, because if you buy a machine and it is not producing, you cannot afford that machine, and the market will tell you how many machines you can effectively run in any casino.

If that artificial barrier was removed, then you would see larger casinos developed, but they can only develop to the size that the market will bear, and I think people here—we have even had stories that they are going to have a Taj Mahal or something like that in South Dakota, or a whole bunch of them, but the market will not bear that.

The market will bear and the development of Indian gaming will attract other people to South Dakota in a tourism sense, and that attraction of other people will spill over into the other economic endeavors and economic benefits in South Dakota, and that is what I meant earlier when I said I think the policy that the State of South Dakota is pursuing is detrimental to the fiduciary responsibility of the State officials to all of their citizens. They are holding down economic development for artificial and what appears to be economic racism reasons.

Mr. RICHARDSON. So, you basically are saying that more machines would have a greater economic impact.

Mr. WAPATO. More machines would have a greater economic impact.

The Chairman of the Flandreau tribe, Mr. Schumacher, indicated that some of their machines are averaging \$500 a day. What that means is that facility is really under-represented in the number of machines that should be there.

If you had in Las Vegas machines that are averaging \$500 a day, they would expand that facility tenfold, because that is what the market will bear, and yet, here, it is being artificially held down.

Mr. RICHARDSON. Tim, before we conclude, give us an update on the negotiations with the Senate.

Mr. WAPATO. Yes. I would like to, just for the record, indicate that the National Indian Gaming Association is a voluntary association of Indian tribes who have come together for the added strength that their unity will give to that process.

When this crisis of possibility of opening the Act came upon us about this time last year, there were 47 members in the National Indian Gaming Association, and we now have 97 members across the nation.



The tribes are the people that set the policy for NIGA. The tribes have indicated that they would enter into a dialogue and discussion in what is now called the Senator Inoye process of dialogue with the states, the state governors, the state attorney generals, the tribes, with basically Senator Inoye and Senator McCain conducting and driving the process.

Tribes are participating on the basis that, if we can find a consensus avenue for amendments to IGRA, then we would be supportive of those and those only, any consensus amendments that might arise.

We probably would not be supportive of opening the Act if we do not arrive at a consensus package between the state attorney generals, the state governors, and the tribal leadership, and it is a big thing to understand, and we are very pleased and, in fact, thankful that the House has not participated in that process, and we think that your oversight with these seven hearings and whatever other ones you might hold may prove invaluable down the road if we get into what might be contentious legislation.

We are at a stage now—we have had, since April 19 of last year, 22 intertribal meetings relating to that process. We have two direct meetings with the governors' task force and the attorney generals' task force and tribal leadership, which the task force for the tribal leadership is about 40 elected tribal leaders.

We are at a stage now where we are somewhat at an impasse in this dialogue, and we have reached impasse over what is called the scope-of-gaming issue, what games are on the table for negotiations.

We are making another effort. The tribes have sent letters to Governor Mike Sullivan from Wyoming, who chairs the governors' task force, that we would like to get back to the table with the principles, not the work groups, not us staff, but the principles, to see if we cannot again take a try at resolving this one last remaining apparently unsolvable issue.

Then, as you may be well aware, Senator Inoye has called for a series of hearings, one of which has already been held April 20, two days ago, in Washington, DC, at which the State of New Jersey Gaming Commission, State of Nevada Gaming Commission, National Indian Gaming Commission, and BIA testified, and there will be a hearing next Tuesday, the 26th, at which tribal leaders will testify as to their regulatory apparatus and their regulatory processes for Indian gaming.

There will be, as I understand it, three more hearings in the Senate, one hearing for the tribes, one hearing for the states, and one hearing for the Federal agencies over any other aspect of Indian gaming that needs to be fixed except regulation, and that is where the 10th and 11th amendment issues or the good faith/bad faith or the limitations and those type of things can be testified to.

It is then the intent of that Committee and Senator Inoye to introduce legislation on or shortly after June 7, and then it is my understanding there will be a series of three more hearings after introduction of legislation.

We believe that, if we have consensus by the time that bill is introduced, then we may have a possibility of rectifying some of the problems you have heard today. If we do not have consensus, I be-

lieve the overriding sentiment in Indian country is that it should not be reopened, because once it is reopened—I do not have to tell you gentlemen, but for the record, once it is reopened, it becomes fair game for anybody's and everybody's amendments to that process, and I do not think that we would like to get into that type of scenario at this time.

I might add this note, too. The National Indian Gaming Commission, which was included for formation in the Act in 1988, did not become operational until February 22, 1993.

We are hearing testimony, we are hearing things that are supposedly drastically wrong and bad with regulations from the Indian side—I mean of Indian gaming, not from the Indian side, and yet, that Act has not had an opportunity to even be truly tested, because we have one year experience with regulations.

Mr. Tuffy Lunderman testified for his Tribe that they cannot even get their contract out of the National Indian Gaming Commission. It has been in there over 300 days now, 300 days for review, and they cannot get it out, and so, we are saying, if it is not broke, we do not think we should go in and fix it now kind of on a piecemeal basis. We think there ought to be some experience in looking at it.

Mr. RICHARDSON. Thank you very much.

Would the gentleman from South Dakota like to make any closing remarks?

Mr. JOHNSON. Again, just, again, to thank you, Mr. Chairman, for your willingness to bring this hearing to South Dakota. I think it has been a very productive, very illuminating hearing.

Obviously, this is not the end to our listening to the concerns of tribal and non-tribal concerned parties from South Dakota, this is an ongoing process, but I think that today highlighted some of the issues that we do need to grapple with.

I want to make a special thanks, again, to the management and staff of the Fort Randall Casino and Hotel. This is a quality facility. I think everyone in South Dakota is proud of what you have put together here and the way that you run it here. I think it really speaks well not only for the tribe but for our entire state.

A special thanks, again, to Brian Drapeaux and to Larry Archambeau for their help and all the extra effort and special arrangements that went into this.

There is always some risk if you begin acknowledging politicians, but I will take some risk here. We have in the audience a candidate for governor. Red Allen is with us.

I think, if anything else, that probably reflects the kind of broad-based interest there is among all of the candidates for governor in both parties on this issue, because it really does go to the future of State-Indian relationships, and even more importantly than that, it goes to the question of whether we finally now have light at the end of the tunnel on the question of Native American poverty and opportunity after 100 years or more of lack of success.

So, this hearing and the issues we deal with, I think, are very fundamental to the future of our State, and again, I appreciate your willingness to come and take time out of your very busy schedule to hold this session here today, Mr. Chairman.

Mr. RICHARDSON. I, too, have found this hearing to be very, very illuminating and interesting, and I mean that. When politicians say what I just said, there is always, you know, he is just saying what he says at every hearing he holds around the country, but I mean this, really, especially the second panel, not to slight the first and third panel—you all were great—but I think that the second panel—there was an unusual mainstream view that I have found very useful as we move ahead with dealing with many of these issues.

Let me state for the audience that the record will be open for two weeks. The luncheon will take place in this room in one-half-hour from now. So, do come back.

Many of us are going to take a tour of the facility, but the Yankton Sioux respectfully, and I put respectfully, request that we vacate this room immediately, now, so that they can set up the lunch.

So, with that, this hearing is adjourned.

[Whereupon, at 12:10 p.m., the Subcommittee was adjourned.]



# APPENDIX

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APRIL 22, 1994

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ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

TESTIMONY

U.S. HOUSE SUB-COMMITTEE ON

NATIVE AMERICAN AFFAIRS

ON

INDIAN GAMING

SUBMITTED BY

STEPHEN N. COURNOYER JR.

FORMER CHAIRMAN, Y.S.T.

(251)



### Committee Members:

Indian gaming has created a lot of opportunity on the reservations. It has also generated complaints by tribal government against the state on compact negotiations over the number of machines and sovereignty.

I feel I can speak from experience as the former chairman of the Yankton Sioux Tribe involved in the development of Fort Randall Casino, at one time the best in all of South Dakota.

Fort Randall has experienced in three years not only great success but a management buy-out with several general managers hired after, which bring us the problems we now face. If done right tribal management is the ultimate goal.

As we are all aware politics in any business does not work and tribes have experienced that. Tribes have many factions within their government all wanting to be chief and doing everything within their power to gain or retain control of management. When this activity is allowed to go on without the Tribal Gaming Commission or the Business and Claims Committee taking any action to protect the integrity of gaming it allows criminal activity to flourish. When organized activity is allowed it seems to grow and gain power and control over the Gaming Commission as well as the Tribal government.

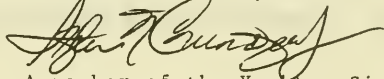
This leaves no avenues, for those members that are effected to take their complaints. The National Indian Gaming Commission and the South Dakota Gaming Commission regulators of Class II and III don't want to take any action or become involved. Where do we take our concerns when it appears the congressional route is the only alternative we have.

Attached is information that was used as a basis to file a complaint with the Tribal Gaming Commission. We never received a satisfactory answer to this complaint. The State Gaming Commission also received a copy of this complaint.

I feel that because of Tribal government's involvement there will never be a resolve to this matter and criminal activity will continue to control and be involved in the management of Fort Randall Casino. As other tribe's take management control of their own casino's they will face similar problems. I feel that this needs to be addressed as congress takes a look at amending the Indian Gaming Regulatory Act.

Please feel free to contact me if needed at my home. My home phone number is 384-3812.

Stephen N. Cournoyer Jr.

A handwritten signature in dark ink, appearing to read "Stephen N. Cournoyer Jr.", written over a horizontal line.

A member of the Yankton Sioux Tribe

**ABOUREZK LAW OFFICES**  
 A PROFESSIONAL CORPORATION  
 816 ST. JOSEPH STREET  
 RAPID CITY, SD 57701

\* JAMES G. ABOUREZK  
 CHARLES ABOUREZK

(605) 342-0097  
 FAX: (605) 342-5170

\* ALSO LICENSED IN THE  
 DISTRICT OF COLUMBIA

REPLY TO: Rapid City

SIoux FALLS OFFICE:  
 700 FIRST BANK BUILDING  
 141 NORTH MAIN AVENUE  
 SIOUX FALLS, SD 57102  
 (605) 334-  
 FAX (605)

March 2, 1994

*Via Facsimile and U.S. Mail*

Darrell E. Drapeau, Chairman  
 Business and Claims Committee  
 Yankton Sioux Tribe  
 Box 248  
 Marty SD 57361

RE: Casino Management

Dear Darrell:

I have just heard that the General Council voted to oust Joe Abdo, Jr. as manager of the casino, and have installed a number of interns as managers. Additionally, I have also heard that the General Council voted to provide Jim Stone's split to his widow for a period of thirty days.

It is necessary to advise you of the substance the Indian Gaming Regulatory Act which covers such a situation. Under 25 U.S.C. §2701(b)(2) the Chairman [of the National Indian Gaming Commission] shall approve any tribal ordinance or resolution concerning the conduct of Class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that -

- (B) Net revenue from any tribal gaming are not to be used for purposes other than
  - (i) to fund tribal government operations or programs;
  - (ii) to provide for the general welfare of the Indian tribe and its members;

Darrell L. Ferguson, Chairman  
March 2, 1994  
Page 2

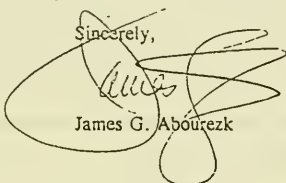
- (iii) to promote tribal economic development;
- (iv) to donate to charitable organization; or
- (v) to help fund operations of local government agencies.

The provisions of paragraph 7 of the compact between the State of South Dakota and the Yankton Sioux Tribe requires that, "All individuals who operate or manage a gaming operation at the establishment referred to in paragraph 8.5 shall be licensed by the Commission. All individuals employed to work directly with the gaming operations shall be licensed by the Commission."

It would appear, therefore, that any payments to individuals who are not working in the casino would be in violation of the Indian Gaming Regulatory Act, and that having any unlicensed personnel working in the casino would be a violation of the compact between the state and the Tribe, and therefore a violation of IGRA.

If you have any questions, please call at your earliest convenience.

Sincerely,



James G. Abourezk

JGA/bjj

**YANKTON SIOUX GAMING COMMISSION  
COMPLAINT FORM**

I, Stephen Cournoyer, Jr., on this date 9th day of March 1994  
at 3:40 a.m./p.m. voluntarily file this complaint to the Yankton Sioux  
Gaming Commission Larry Archambeau, Jr.  
(Name & Title)

We, members of the Yankton Sioux Tribe, would like to file a formal  
complaint with the Yankton Sioux Tribal Gaming Commission for the following  
reasons:

1. Violation of State and Federal Gaming Laws are occurring by allowing  
unauthorized percentages to be paid out of the casino revenues without the  
persons receiving those percentages having a gaming license and without those  
persons taking an active role in the management of casino business.

2. There have been various violations of Federal and State Gaming Laws  
by not following proper procedures with regard to the general operations of  
the casino and management of it's profits.

3. Allowing persons who do not have gaming licenses to be in restricted  
areas of the Fort Randall Casino and having access to important casino records  
in violation of State and Federal Gaming laws, rules and regulations.

4. Causing the reputation and integrity of the Fort Randall Casino to be  
seriously damaged.

WHEREFORE, the undersigned hereby requests that the Yankton Sioux Tribal  
Gaming Commission schedule a hearing on the above and foregoing complaint;  
and enter an order prohibiting the above mentioned actions, incidents, and  
procedures from taking place; for an order directing that the South Dakota  
Gaming Commission conduct an investigation into the above mentioned items  
forthwith, and for such other and further relief as the Gaming Commission may  
feel warranted under the circumstances.

Signed, *Stephen Cournoyer, Jr.*

Date: 3-9-94



YANKTON SIOUX GAMING COMMISSION  
COMPLAINT FORM

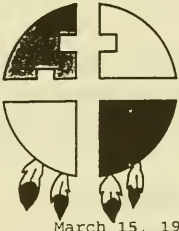
I, Stephen N. Cournoyer, Jr., on this date 3-15-94 1994  
at 4:00 a.m./p.m. voluntarily file this complaint to the Yankton Sioux  
Gaming Commission Larry Archambeau, Jr./Executive Secretary  
(Name & Title)

Attachment and further clarification to the complaint filed  
by Stephen N. Cournoyer, Jr. on 3-09-94 with the Yankton  
Sioux Gaming Commission.

1, 2, & 3 of the complaint refers to Section 7 of the Tribal  
Stte Compact, Licensing of Gaming Operators and Employees and  
Section 12 of the Indian Gaming Regulatory Act.  
Management Contracts.

Also attached are petitions signed by other members of the  
Yankton Sioux Tribe that are concerned about the matter.

Signed: Date: 3-15-94



# YANKTON SIOUX TRIBE

GAMING COMMISSION  
R.R. 1 Box 100  
LAKE ANDES, SOUTH DAKOTA 57356  
PHONE: (605) 487-7871  
FAX: (605) 487-7354

March 15, 1994

General Management  
Ft. Randall Casino & Hotel  
RR 1 Box 100  
Lake Andes, SD 57356

Dear Managers,

This letter is being written in response to a motion made during a Special Meeting held on 3/15/94 (meeting minutes attached).

According to the minutes, no percentages presently being paid to individual tribal members are to be paid by the Casino Finance Office. Also, all other expenses not associated with the Casino are not to be paid by the Casino Finance office. The Commission has been served with a formal Complaint addressing several concerns with expenses incurred by the Tribal Government and imposed upon the Ft. Randall Casino for payment and the percentages presently being paid to individual tribal members by the Casino. The Commission feels in order to maintain the integrity and accountability of the Ft. Randall Casino and Indian Gaming, only expenses incurred by the operation of the Casino should be paid by the Casino finance office.

The Gaming Commission feels these expenses are not Casino expenses and therefore should not be paid by the Casino. General Council was very vague in these motions and left much to be interpreted. The Commission does not at this time dispute the legality of these General Council motions but only protecting the integrity of the Yankton Sioux Tribe and Fort Randall Casino.

The Commission is exercising it's authority and responsibility under the Yankton Sioux Gaming Ordinance. Any violations on this rule are subject to disciplinary action outlined in the Gaming Regulations.

Sincerely,

*Larry Archambeau, Jr.*  
Larry Archambeau, Jr.  
Chairman/Executive Secretary

LARRY ARCHAMBEAU, JR.  
EXECUTIVE SECRETARY  
MONA ZEPHER  
VICE-CHAIRMAN

GEORGE COURNOYER  
COMMISSIONER  
CLARENCE ROCKBOY  
SECRETARY  
ROBERT KAZENA  
TREASURER



# Yankton Sioux Tribe

Box 248  
MARTY, SO. DAK., 57361  
384-3804/384-3641  
FAX # 384-5687

COPY

March 15, 1994

Fort Randall Casino & Hotel  
Interim Managers/Jean Peterson  
P. O. Box 756  
Wagner, South Dakota 57380-0756

Dear Sirs:

This is to provide you with official authorization to issue a check from your finance office to Mrs. Ella Rae Stone.

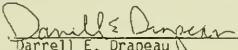
The check(s) should be processed as follows:

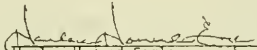
1. Lump sum death benefit payment and
2. Processed as an accounts payable.

A 1099 would be issued to Mrs. Stone at the end of 1994.

If you have any questions, please contact our office.

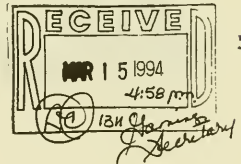
Sincerely,

  
Darrell E. Drapeau  
Chairman

  
Harlan Horned Eagle  
Treasurer

cc: Harley Zephier, Business Manager  
Business and Claims Committee  
file

DED/rmc



Sam Weddell  
 P/R # 64823 3-17-94  
 gross 4790.92  
 net 2908.26

---

Ella Rae Stone  
 A/P # ?

\$24,475.34

Checks made out at (P315)★  
 Casino to William Weddell and  
 Ella Rae Stone on 3-17-94

★- initials and Employee A.P. #  
 of Jean Peterson, Comptroller at  
 Fort Randall Casino.

## PETITION

WE, the undersigned, being all duly enrolled members of the Yankton Sioux Tribe, hereby petition the Yankton Sioux Tribe, and the Yankton Sioux Tribe Gaming Commission to act on the illegal percentages paid out of Casino revenues (Sam Weddell 2% and Ella Rae Stone 4%) and to prohibit non-licensed individuals working with or having access to gaming records and revenues at the Fort Randall Casino.

The Yankton Sioux Tribe Gaming Commission has the responsibility and authority to keep the integrity of Indian Gaming clean and to ensure that all Gaming laws, rules and regulations are not violated, and are properly administered according to the Indian Gaming Regulatory Act, and we hereby request that the Yankton Sioux Tribe Gaming Commission take remedial action within five (5) days.

We also request that the payment of illegal percentages from Casino revenues be stopped immediately, and that non-licensed persons be immediately enjoined and restrained from having access to Casino Gaming and revenue records.

\*\*\*\*\*

All persons must print and sign their names below.

SIGNATURE	NAME	ADDRESS	DATE
<i>[Signature]</i>	Jan Archambault	Box 954, Wagner, SD 57220	3/9/94
<i>[Signature]</i>	KAREN TUTTLE	Box 277, WAGNER, SD 57220	3/9/94
<i>[Signature]</i>	FRITH ARCHAMBAULT	3704 64th St SE SD 57	3/9/94
<i>[Signature]</i>	FRITH ARCHAMBAULT	RR3 Box 504, Wagner, SD	3/11/94
<i>[Signature]</i>	Carol Archambault	P.O. Box 888, Wagner, SD	3/11/94
<i>[Signature]</i>	RAY ARCHAMBAULT	P.O. Box 828, Wagner, SD	3/11/94
<i>[Signature]</i>	WENDY ARCHAMBAULT	P.O. Box 222, WAGNER, S.D.	3/11/94
<i>[Signature]</i>	Leanne Archambault	P.O. Box 641, Lakehurst, SD	3/11/94
<i>[Signature]</i>	THOMAS CORMULLEY	P.O. Box 835, WAGNER, SD	3/11/94
<i>[Signature]</i>	MAHUT STANTMUEHL	P.O. Box 335, WAGNER, SD	3/12/94
<i>[Signature]</i>	RAMANHA ZEPHIER	P.O. Box 748, WAGNER, SD	3/14/94
<i>[Signature]</i>	Brenda Duorak	P.O. Box 751, Wagner, SD	3/14/94
<i>[Signature]</i>	KEVIN TOWNSEND	P.O. Box 422, Lakehurst, SD	3/14/94
<i>[Signature]</i>	JEAN AEROW	RR1 Box 486, Lakehurst, SD	3/14/94
<i>[Signature]</i>	Sandra Adams	Box 743, Wagner, SD	3-14-94
<i>[Signature]</i>	Sandra Adams	Box 268, Wagner, SD	3-14-94
<i>[Signature]</i>	KATHY CORMULLEY	Box 745, WAGNER, S.D.	3-14-94
<i>[Signature]</i>	MARK CORMULLEY	P.O. Box 1018, WAGNER, S.D.	3-14-94
<i>[Signature]</i>	FRANK CORMULLEY	WAGNER, SD	3-14-94
<i>[Signature]</i>	Ramsey, E	Wagner	3-14-94
<i>[Signature]</i>	Quakers	Wagner, SD	3-14-94





3 9999 05983 447 1

Page two of Gaming Petition.

[illegible]

YANKTON SIOUX TRIBE) ss.

AFFIDAVIT

I, Stephen N. Courvoisier, the undersigned, being duly sworn under oath, state that I circulated the above petition; that all of the signatures herein are witnessed by me, and that all are duly enrolled members of the Yankton Sioux Tribe, and are of the age of eighteen years of age or older.

Circulator

Subscribed and sworn to before me this 15<sup>th</sup> day of March,  
1994.

My Commission Expires:

Notary Public

We also request that the payment of illegal percentages from Casino revenues be stopped immediately, and that non-licensed persons be immediately enjoined and restrained from having access to Casino Gaming and revenue records.

\*\*\*\*\*

All persons must print and sign their names below.

[illegible]

[illegible]

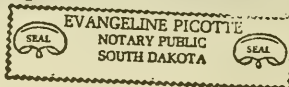
# AFFIDAVIT

Stanton Prehause  
Circulator

My Commission Expires:

*Evangeline Picotte*  
Notary Public

July 10, 1994



ISBN 0-16-046352-1



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